



Odhiambo v Prinias Enterprises Limited t/a Prinias Hotel (Cause E031 of 2024) [2025] KEELRC 2893 (KLR) (27 October 2025) (Ruling)

Neutral citation: [2025] KEELRC 2893 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E031 OF 2024
JK GAKERI, J
OCTOBER 27, 2025**

BETWEEN

FREDRICK ODHIAMBO CLAIMANT

AND

PRINIAS ENTERPRISES LIMITED T/A PRINIAS HOTEL RESPONDENT

RULING

1. Before the court for determination is the applicant's/Respondent's Notice of Motion dated 4th July, 2025 filed under Certificate of Urgency seeking Orders that:-
 1. Spent.
 2. Spent.
 3. Pending the hearing and determination of the intended appeal there be a stay of execution of the Judgement delivered by the Hon. Justice NZIOKI WA MAKAU on 19th June, 2025 and all consequential Orders arising therefrom.
 4. The costs of this application be in the cause.
2. The Notice of Motion is expressed under Sections 1A, 1B, 3 and 3A of the *Civil Procedure Act* and Oder 42 Rule 6 of the Civil Procedure Rules 2010, and is based on the grounds set out on its face and the Supporting Affidavit of Jahannes Gwada sworn on 4th July, 2025 who deponed that a Notice of Appeal against the Judgment dated 27th June, 2025 had already been filed and the applicant was apprehensive the claimant will commence execution process which would occasion substantial loss and irreparable damage to the respondent Hotel in execution of the decree of Kshs.4,331,666.00 which would result in closure of the business.



3. That the Hotel was running on a bank overdraft to pay salaries and remain afloat, the claimant was a man of straw he cannot re-imburse the decretal sum if paid to him and the applicant had an arguable appeal with high chances of success.
4. That if the Order sought is not granted the appeal will be rendered nugatory.
5. By a Supplementary Affidavit, sworn on 19th September, 2025, Mr. Johannes Gwada deposed that the Memorandum of Appeal raised more than 5 grounds of appeal that were genuine for ventilation at the Court of Appeal.
6. The affiant deposed that the applicant was ready and willing to provide a bank or insurance guarantee that the decretal amount shall be paid if the appeal was unsuccessful and had initiated the process.

Respondent's case

7. Vide a Replying Affidavit sworn on 21st July, 2025, the respondent deposed that the applicant had no arguable appeal as the grounds it sought to rely on were misconceived.
8. That it conceded that it was in dire financial position to the detriment of the respondent. That if the business became insolvent, the respondent would not recover the decretal sum.
9. The affiant further deposed that the applicant had not met the requirements of Order 42 Rule 6 of the Civil Procedure Rules.
10. Counsel for the appellant submitted that the applicant had an arguable appeal and substantial loss would be occasioned if the Order sought was not granted.
11. Counsel further contended that the applicant had met the requirements of Order 42 Rule 6 of the Civil Procedure Rules as the instant application was filed two weeks after the Judgment was delivered, and the applicant stood to suffer substantial loss as the respondent was a man of straw, it was ready to provide security and the application ought to be allowed.
12. The Respondent's counsel, on the other hand cited the sentiments of the Court of Appeal in Kenya Shell Ltd V Benjamin Karuga Kibiru & another and Samvir Trustee Ltd V Guardian Bank Ltd, to submit that the applicant had not provided evidence to show that it would suffer substantial loss.
13. According to counsel, the respondent stood to suffer substantial loss because the applicant was insolvent.
14. As regards security, counsel contended that the applicant's submission of its readiness to provide security was speculative and unsubstantiated and the court was not bound by the proposal.
15. Reliance was placed on the sentiments of the Court in Arun Co. Sharma V Ashana Rairundalia t/a Rairundalia & Co. Advocates [2014] eKLR and Samvir Trustees Ltd V Guardian Bank Ltd (Supra), to submit that although the court had accorded the applicant an opportunity to negotiate suitable security but negotiations did not commence, the applicant was to blame and its proposal was not credible.
16. Counsel submitted that should the court be inclined to grant a stay the most appropriate was deposit of decretal sum of Kshs.4,663,291.66 in an interest earning account in a reputable bank within 30 days.
17. Counsel prayed for dismissal of the instant application with costs.



Analysis

18. I have carefully considered the application, Replying Affidavit and rival submissions by counsel.
19. Accordingly, the only issue for determination is whether the application has merit.
20. While the applicant deponed and submitted that it had met the threshold for the grant of the Orders of stay of execution pending the hearing and determination of the appeal, the claimant/respondent maintained that the applicant had neither demonstrated the substantial loss it stood to suffer nor its commitment to provide appropriate security, having failed to utilize an earlier opportunity accorded by the court.
21. It is trite that the principles that govern the grant of stay of execution pending appeal are well settled.
2. Order 42 Rule 6(2) of the Civil Procedure Rules 2010 provides:
 - No Order for stay of execution shall be made under sub-rule (1) unless-
 - a. The court is satisfied that substantial loss may result to the applicant unless the Order is made and that the application has been made without unreasonable delay; and
 - b. Such security as the court Orders for the due performance of such decree or Order as may ultimately be binding on him has been given by the applicant.
22. As the Court of Appeal held in *Butt V Rent Restriction Tribunal* [1982] KLR 417, the court's power to grant or decline an application for stay of execution is discretionary and such discretion ought to be exercised in accordance with the principles set out in Order 42 Rule 6 of the Civil Procedure Rules.
23. Similarly, the court is enjoined to ensure that the Order of stay is only granted for sufficient cause having regard to the provisions of the *Civil Procedure Act*.
24. As regards substantial loss, the sentiments of the Court of Appeal in *James Wangalwa & another V Agnes Naliaka Cheseto* [2012] eKLR are instructive.
25. The Court held inter alia:

...Even when execution has been levied and completed, that is to say the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal... the issue of substantial loss is the cornerstone of both jurisdiction. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory”.
26. Similarly, in *Equity Bank Ltd V Taiga Adams Co. Ltd* [2006] eKLR the court stated as follows:

The only way of showing or establishing substantial loss is by showing that if the decretal sum is paid to the respondent – that is execution is carried out – in the event the appeal succeeds, the respondent would not be in a position to pay-reimburse as he is a person of no means. Here no such allegation is established by the appellant”.



27. In the instant application, the applicant contends that it is likely to suffer substantial loss if the respondent was paid the decretal sum as the respondent was a man of straw, an assertion the respondent did not controvert.
28. It equally argues that it was surviving on bank overdrafts and if execution was levied it would close shop.
29. Although the applicant did not furnish the court with verifiable evidence of its financial standing, the fact that the respondent did not deny the allegation that he was a man of straw would appear to suggest that the decretal sum would be irrecoverable if the appeal was successful, shows that the applicant was likely to suffer substantial loss if the Order of stay of execution was not granted.
30. The court is satisfied that the applicant has fulfilled the requirement of substantial loss.
31. As regards the timing of the instant application, the court is satisfied that the applicant acted without unreasonable delay as the Judgment sought to be appealed against was delivered on 19th June, 2025 and the instant application was filed two weeks later.
32. Finally, concerning security for due performance of the decree, the applicant expressed its willingness to furnish security by way of insurance or bank guarantee and had initiated the process, which is creditable notwithstanding the fact that it could have been concluded earlier.
33. The respondent on the other hand submitted that the most appropriate security was deposit of the decretal amount in an interest earning account.
34. In *Focin Motorcycle Co. Ltd V Ann Wambui Wangui & another* [2018] eKLR, the court held that:

Where the applicant proposes to provide security as the applicant has done, it is a mark of good faith that the application for stay is not just meant to deny the respondent the fruits of judgment. My view is that it is sufficient for the applicant to state that he is ready to provide security or to propose the kind of security but it is the discretion of the court to determine the security...”

See *Arun C. Sharma V Ashana Raikundalia t/a Rairundalia & Co. Advocates* (supra), on the purpose of security under Order 42 Rule 6 of the Civil Procedure Rules.

3. In the instant case, the applicant offered to provide security by way of a Bank or Insurance guarantee and has therefore satisfied the requirement for security.
36. It is trite that Order 42 Rule 6(2) of the Civil Procedure Rules is couched in mandatory terms and for a stay of execution to issue, all the conditions must be satisfied.
37. In the instant case, the court is satisfied that the applicant has satisfied the requirements for a stay of execution pending appeal to be granted.
3. Consequently, the Notice of Motion dated 4th July, 2025 is allowed in the following terms.
 - a. A stay of execution pending appeal be and is hereby granted.
 - b. The applicant shall deposit the decretal amount in an interest earning account in a reputable bank in the names of the advocates within 45 days or
 - c. The applicant shall provide a bank guarantee of the decretal amount within 30 days.PROVIDED THAT if the applicant fails to fulfil (a) or (b) above, the Order of stay of execution shall lapse and the respondent shall be at liberty to execute the judgment and decree.



d. Parties shall bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KISUMU ON THIS 27TH DAY OF OCTOBER, 2025.

DR. JACOB GAKERI

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

