



Portsmouth Holdings Limited v Kenya Railways Corporation (Environment and Land Case 7 of 2021) [2025] KEELC 7169 (KLR) (22 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7169 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 7 OF 2021**

CK NZILI, J

OCTOBER 22, 2025

BETWEEN

PORTSMOUTH HOLDINGS LIMITED PLAINTIFF

AND

KENYA RAILWAYS CORPORATION DEFENDANT

RULING

1. What is before the court is an application dated 11/7/2025 for a stay of execution of the judgment and or decree of this court delivered on 25/6/2025, pending hearing and determination of an intended appeal at the Court of Appeal. The reasons are contained on the face of the application and in a supporting affidavit of Stanley Gitari, sworn on 11/7/2025. The applicant states that a notice of appeal has been filed against the judgment, and that the respondent is likely to execute the decretal amount of Kshs. 57,004,001/=, that there will be a substantial loss, that the applicant is willing to provide security for the due performance of the decree, which the court may deem fit, and that the application was filed without any unreasonable delay, the respondent will be prejudiced in any way should the order be issued, and that the appeal has reasonable chances of success, which will be rendered nugatory in absence of any stay orders.
2. The application is opposed through a replying affidavit sworn by Anthony Lucas Max on behalf of the respondent, sworn on 29/7/2025. It is deposed that the purpose of the stay is to maintain the status quo, pending the hearing of the intended appeal, and that the applicant has never been in occupation of the subject matter. The respondent deposes that the application, therefore, is not specific on what the applicant seeks to stay in the decree, for there are two aspects, the monetary part or the entire judgment.
3. The respondent deposes that the court declared it the legal owner of the suit land and therefore to stay that aspect would be more prejudicial to it as the applicant will continue to delay it from enjoying the fruits of its judgment, namely the right to exercise proprietary rights over the suit property.



4. The respondent deposes that a filing of a notice of appeal does not guarantee an automatic right of stay, more so when no draft memorandum of appeal has been attached to the supporting affidavit, for the court to assess if the intended appeal has arguable points.
5. The respondent deposes that no demonstration has been made of any substantial loss or damage that would be suffered if execution were to take place.
6. The respondent deposes that the applicant has not shown sufficient cause why it should be deprived of the fruits of its judgment, other than seeking to protract the matter unnecessarily.
7. The respondent deposes that should the court be inclined to grant the orders of stay, then the entire decretal sum awarded as damages should be deposited in a joint interest-earning account held by advocates for the parties within a stipulated timeline.
8. The applicant relies on written submissions dated 29/7/2025. Reliance is placed on *Selestica Ltd -vs- Gold Rock Development Ltd* [2015] eKLR, *James Wangalwa & Another -vs- Agnes Naliaka Cheseto* [20212] eKLR, and *Silverstein -vs- Chesoni* [2002] 1KLR 867.
9. Stay of execution of a decree or order at the court which made the same, pending an appeal at the higher court, is governed by Order 42 Rule 6 of the Civil Procedure Rules.
10. The parameters to consider over and above the usual three conditions, namely delay, substantial loss, and security for due performance of the decree, should the appeal not succeed, include demonstration of sufficient cause why the successful party should be kept away from the fruits of its own judgment.
11. The law has not set what amounts to maximum or minimum delay. It all depends on the circumstances of each case, for even one day's delay could be unreasonable. See *Jaber Mohsen Ali & Another -vs- Priscillah Boit & Another* (2014) eKLR
12. Substantial loss is the cornerstone of a stay. See *Kenya Shell Ltd -vs- Benjamin Karuga Kibiru & Another* [1982 -88] I KAR 1018. It has to be substantial with tangible and cogent evidence. In *James Wangalwa -vs- Agnes Cheseto* (supra), the court said that execution per se is a legal process and does not amount to substantial loss. The court held that a party must show other vitiating factors that will create a state of affairs that will irreparably affect or negate the very essential core of the application as the successful party in the appeal.
13. The purpose of a stay is to preserve the substratum of the appeal. It is not enough to allege substantial loss. In *Samvir Trustee Ltd -vs- Guardian Bank Ltd*, Nairobi Milimani HCC No. 797 of 1997, the court observed that an applicant must provide empirical and documentary evidence why the wheels or scales of justice should tilt in its favour; otherwise, the court must balance the two scales to ensure that no party is prejudiced or left at a disadvantage.
14. In *RWW -vs- EKW* [2019] eKLR, the court said that there are two competing rights between an unsuccessful and a successful party to the appeal, where one of whom has defined rights as opposed to the other, and should therefore not be unreasonably or without just cause denied the fruits of its own judgment.
15. Sufficient cause, therefore, must be shown why the decree should be postponed or suspended. In *Samvir Trustee Ltd -vs- Guardian Bank Ltd*, (supra), the court said that filing of an appeal alone will never operate as a stay of execution, and all other circumstances must be taken into account to assess if there is sufficient cause to grant the orders of stay. In *New Ocean Transport Limited & Lesk Investments Limited -vs- Anwar Mohamed Bayusuf Limited* eKLR Civil Application 16 of 2014, the



court held that the necessity for the ends of justice remains key and that restoration into the premises, even where an eviction order has been completed, had to be looked at.

16. In this application, the applicant does not specify, as indicated by the respondent, what aspect of the judgment it wants stayed. The status of the subject land has not been addressed by any of the parties. It is not clear whether the respondent has executed the decree. Be that as it may, the court is aware that even before the judgment, a temporary order of injunction had been issued against the judgment debtor.
17. The applicant is silent on what substantial loss it will incur should the decree not be stayed.
18. Security has to be offered. It is not enough to leave it to the court to determine or direct the nature of the security. See *Focin Motorcycle -vs- Ann Wambui Wangui & another* (2018) eKLR. Offering security is a sign of good faith. The security must be commensurate with the decree. In a money claim, it is not enough to say that the decretal amount is colossal. See *Kenya Shell Ltd -vs- Benjamin Karuga Kibiru* (supra). In this application, the applicant has not said that the respondent is incapable of refunding the sum should the appeal succeed. The four hurdles under Order 42 Rule 6 of the Civil Procedure Rules must be met conjunctively.
19. Looking at the totality of the circumstances, the court finds the applicant entitled only to the order for stay of the payment of the special damages, subject to depositing half of the decretal sum in a joint interest-earning account in the names of the two lawyers within 45 days from the date hereof; otherwise, the orders of stay shall lapse.
20. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 22ND DAY OF OCTOBER 2025.

In the presence of:

Court Assistant – Dennis

Mr. Kiarie for the plaintiff/respondent present

No appearance for the applicant/defendant

HON. C.K. NZILI

JUDGE, ELC KITALE.

