



**Amadi v Great Lakes University of Kisumu (Cause E071 of 2021)
[2025] KEELRC 3147 (KLR) (12 November 2025) (Ruling)**

Neutral citation: [2025] KEELRC 3147 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE E071 OF 2021
NZIOKI WA MAKAU, J
NOVEMBER 12, 2025**

BETWEEN

PROF ATIENO ANNE NDEDE AMADI APPLICANT

AND

GREAT LAKES UNIVERSITY OF KISUMU RESPONDENT

RULING

1. The motion before me for determination is the notice of motion application dated 23rd June 2025. Through it, the Respondent Applicant seeks an order for stay of execution of this court's judgment delivered on 12th May 2025, pending the hearing and determination of its appeal to the Court of Appeal. It also prays that costs of the application be provided for. The application is premised on the grounds set out on its face and is supported by the affidavit of Professor Hazel Miseda Mumbo, the Applicant's Vice Chancellor. She deposes that the Applicant is dissatisfied with the judgment, has filed and served a notice of appeal, and has requested for typed proceedings for purposes of the appeal. She further avers that the Claimant, who currently resides and works in Texas, previously demonstrated disregard for court orders, as evidenced by her departure from the court's jurisdiction after warrants of arrest were issued against her for failure to comply with an order dated 8th December 2020. In view of this conduct, the Vice Chancellor deposes that it may be impossible to recover the decretal amount if it is released to the Claimant and the appeal subsequently succeeds. She adds that the Claimant has no known local assets from which the decretal sum could be recovered.
2. In further support of the application, she states that the Applicant is ready and willing to provide security in the form of a bank guarantee for part of the decretal sum, given its strained financial circumstances. She attributes the financial difficulties to the new management's inheritance of liabilities amounting to approximately Kshs. 796,230,920 -, coupled with numerous claims arising from judgments occasioned by mismanagement during the Claimant's tenure and the Applicant's limited income-generating capacity. For these reasons, she avers that if compelled to pay or deposit the



entire decretal sum, the Applicant's operations would grind to a halt. She further contends that if stay is not granted, the Claimant may proceed with execution, rendering the intended appeal nugatory. Finally, she maintains that the application has been filed timeously and that the orders sought should be granted in the interest of justice.

3. In opposition, the Claimant Respondent filed grounds of opposition dated 8th July 2025 and a replying affidavit sworn on 22nd July 2025. She deposed that the allegations concerning abscondment, lack of known assets, and mismanagement during her tenure were *res judicata*, having been raised and determined during the hearing of the main suit. With regard to security, she deposed that she opposed the offer of a bank guarantee, noting that this court had already ordered on 10th July 2025 that the Applicant deposit the entire decretal amount into a joint interest-earning account in the names of both counsel on record.
4. On the issue of financial distress, she contended that the Applicant is a large institution with sufficient financial capacity. She further asserted that the decretal amount represents salary arrears and gratuity which ought to have been budgeted for, and maintained that the Applicant remains legally obligated to satisfy lawful court orders. Concerning the propriety of the application, the Claimant Respondent argued that it ought to have been filed before the Court of Appeal, as this court became *functus officio* upon the lapse of the 30-day stay of execution issued on 12th May 2025. She further contended that the application was filed inordinately late, more than a week after the expiry of the stay period. On the alleged risk of execution, she maintained that no execution could issue as her bill of costs filed on 24th June 2025 was yet to be taxed. Consequently, she urged the Court to dismiss the application with costs.
5. The application was canvassed by way of written submissions.

Respondent Applicant's Submissions

6. The Applicant submitted that applications for stay of execution are guided by the principles under Order 42 Rule 6(2) of the Civil Procedure Rules, namely: that the applicant must demonstrate that substantial loss will be suffered if the stay is not granted; that the application was made without unreasonable delay; and that sufficient security has been offered for the due performance of the decree. With regard to substantial loss, the Applicant asserted that it had demonstrated the same given the fact that the Claimant Respondent resides and works in Texas USA, a jurisdiction beyond the reach of the court, and the fact that she has no known assets in Kenya out of which recovery could be made should the appeal succeed. The Applicant further pointed out that the Claimant had previously defied court orders and fled the country to avoid enforcement, indicating that she may frustrate execution if required to refund the decretal sum. In response to the Claimant's allegations of the above issues being *res judicata*, the Applicant asserted that it was misplaced as the earlier application for security for costs was made before trial and dealt with different issues. In support of its position the Applicant submitted that substantial loss is the cornerstone of an application for stay, citing *Antoine Ndiaye v African Virtual University* [2015] eKLR, where the court held that an applicant must show that payment of the decretal sum would cause irreparable loss if the appeal succeeds, particularly where there is a risk that the respondent cannot refund the amount. It also relied on *National Industrial Credit Bank Ltd v Aquinas Francis Wasike & another* [2006] eKLR, where the Court of Appeal held that once an applicant reasonably expresses apprehension that the respondent may be unable to refund the decretal sum, the evidential burden shifts to the respondent to show otherwise.
7. On the issue of delay, the Applicant maintained that the application was filed timeously. It asserted that judgment was delivered on 12th May 2025, and the application was filed on 25th June 2025, two weeks after the lapse of the stay granted at the time of judgment. It thus contended that the delay was neither inordinate nor prejudicial, as the decree had not yet been executed and costs had not



been taxed. The Applicant also dismissed the Claimant's argument that the court was *functus officio*, contending that under Order 42 Rule 6(3), a trial court retains jurisdiction to grant stay even after delivering judgment, upon either an oral or formal application. Regarding security, the Applicant submitted that it is ready to furnish a bank guarantee for 25% of the decretal sum, citing financial constraints arising from accumulated liabilities exceeding Kshs. 796 million, including judgment debts and creditors threatening execution. It asserted that, being an educational institution serving the public, its operations risked being crippled if it is compelled to deposit the entire decretal sum. It was the Applicant's contention that there is no mandatory requirement that it deposits the whole decretal amount as security. It maintained that under Order 42 Rule 6(2)(b), the court has discretion to determine the nature and extent of security to be provided. In support of this position, it urged the court to apply the overriding objective and exercise its discretion in his favour citing *Sankale Ole Kantai T A Kantai & Co. Advocates v Housing Finance Co. (K) Ltd* [2014] eKLR which in referencing *Jason Ngumba Kagu v Intra Africa Insurance Company Ltd* [2014] eKLR, noted that:

"The correct position arising from these decisions of the Court of Appeal and recently of the Supreme court is that the principle of overriding objective now enables the court to have a much wider approach in applying these thresholds set out by the law in a manner that it will exercise discretion for the sake of substantive justice under *akn ke act 2010 constitution the Constitution.....* What it means is that the courts should apply them within the constitutional desire to serve substantive justice by acting fairly and justly; in the circumstances of each case as opposed to the strict application thereof without regard to context and demands of the justice of the case".

8. In view of the foregoing the Applicant submitted that holding the entire decretal sum in a joint account for the years it would take to conclude the appeal would severely affect the its ability to discharge its constitutional mandate of providing education. In conclusion, the Applicant urged the Court to allow the application in the interest of justice and grant stay of execution on condition that it furnishes a bank guarantee for 25% of the decretal sum within 45 days.

Claimant Respondent's Submissions

9. The Claimant Respondent equally relied on the three conditions for stay under Order 42 Rule 6 of the Civil Procedure Rules: that substantial loss may result unless stay is granted, that the application is made without unreasonable delay, and that adequate security for due performance of the decree is provided.
10. On substantial loss, she submitted that the allegations regarding her residence in the USA and lack of assets in Kenya had been raised and dismissed in the earlier application for security for costs dated 5th March 2024. She further asserted that the Applicant had approached the Court with unclean hands, having failed to comply with the Court's direction of 10th July 2025 requiring deposit of the entire decretal sum in a joint interest-earning account.
11. On delay, she submitted that the application was filed inordinately late. She maintained that the Applicant was indolent and only acted after she filed her party-and-party bill of costs. She highlighted the fact that the 30-day stay granted on 12th May 2025 lapsed on 12th June 2025, and that her bill of costs was filed on 24th June 2025, followed by the present application the next day, on 25th June 2025. With respect to security, she submitted that the evidence adduced to show the Applicant's financial distress related to the years 2021–2023 and therefore did not reflect its current financial position. In any event, she contended that if the Applicant were indeed in such dire financial straits, that would be a compelling reason for ordering deposit of the entire decretal sum, to safeguard her right to enjoy



the fruits of her judgment at the conclusion of the appeal. In conclusion, the Claimant Respondent submitted that the application was devoid of merit. However, she urged that if the Court were inclined to allow it, sufficient security should be ordered to protect her interests.

Disposition

12. The application for stay is measured against various parameters. The true north for stay is Order 42 Rule 6 of the Civil Procedure Rules. This Order provides that a stay will be granted if substantial loss may result unless stay is granted, the application is made without unreasonable delay, and adequate security for due performance of the decree is provided. The first ground is met as the sum to be paid to the successful Claimant is not little. The Respondent asserts it is under financial distress but has not revealed the current state of financial affairs. The annexed reports relate to the period circa 2023 and therefore are not appropriate to determine the current financial position of the Respondent.
13. On the second aspect, the motion for stay was made about 14 days after the lapse of the 30-day stay ordered. Whereas it could be argued that this Court became functus officio after the expiry of the stay it granted, the Court is still seized of the matter in as far as a stay application is concerned. Having made the motion within 14 days of the end of the period within which it was to deposit the sums into a joint interest earning account, the Court is of the view there was timeous application for the relief sought. On the final aspect for consideration as to whether stay is merited, the Respondent offers to deposit by way of bank guarantee a quarter of the decretal sum to secure the stay. In my considered view 25% of the decretal sum hardly fits within the parameters of adequate security for the due performance of the decree. The justice of the case is that, as an appeal has been preferred in the Court of Appeal, and in order to preserve the substratum of the matter, it is my order that the entire decretal sum be deposited in a joint interest earning account of Counsel on record for the Claimant and the Respondent within the next 45 days failing which the stay granted herein will automatically lapse. The Claimant will be at liberty to execute should taxation have been concluded upon the failure aforesaid.

Orders accordingly.

DATED AND DELIVERED AT KISUMU THIS 12TH DAY OF NOVEMBER 2025

NZIOKI WA MAKAU, MCIARB.

JUDGE

