



Kenya Railways Corporation v Combined Warehouse Limited & 5 others (Environment and Land Case 188 of 2017) [2025] KEELC 7992 (KLR) (13 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7992 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE 188 OF 2017
YM ANGIMA, J
NOVEMBER 13, 2025**

BETWEEN

KENYA RAILWAYS CORPORATION PLAINTIFF

AND

COMBINED WAREHOUSE LIMITED 1ST DEFENDANT

**THE OFFICIAL RECEIVER AS THE LIQUIDATOR SWAN MILLERS LIMITED
(UNDER LIQUIDATION) 2ND DEFENDANT**

THE DIRECTOR OF SURVEY 3RD DEFENDANT

THE COMMISSIONER OF LANDS 4TH DEFENDANT

THE LANDS REGISTRAR MOMBASA 5TH DEFENDANT

THE COUNTY GOVERNMENT OF MOMBASA 6TH DEFENDANT

RULING

1. By a notice of motion dated 29.05.2025 filed pursuant to Sections 1A, IB and Rule 1 of the Civil Procedure Rules 2010 and all other enabling provisions of law, the 1st defendant sought the following orders;
 - a. spent.
 - b. spent
 - c. That pending the inter partes hearing and determination of the appeal, there be a stay of proceedings of the party and party bill of costs dated 26.03.2025.
 - d. Spent



- e. That following the grant of prayers (2) and (3) above the Honourable Court be pleased to grant an order for stay of execution of the decree and judgment delivered on 11.12.2024 pending the inter partes hearing and determination of the appeal.
 - f. That costs of this application be provided for.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Ahmed Kana on 30.05.2025 and the supplementary affidavit sworn by Rajesh Chudgar on 20.08.2025. The 1st defendant pleaded that unless there was a stay of taxation of the plaintiff's party and party bill of costs and a stay of execution of the decree its intended appeal shall be rendered nugatory and an academic exercise.
 3. The plaintiff filed a replying affidavit sworn by Justine Omoke on 05.07.2025 in opposition to the application. It was stated that save for the award of costs the rest of the prayers in the judgment were negative orders hence not capable of being stayed. It was pleaded that the 1st defendant had not demonstrated how it shall suffer substantial loss or how the intended appeal shall be rendered nugatory in the absence of an order of stay. It was also the plaintiff's case that the 1st defendant had not filed a valid notice of appeal since the one which was filed was never served in accordance with the applicable rules.
 4. When the application was listed for directions it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the 1st defendant filed written submissions dated 20.08.2025 whereas the plaintiff filed submissions dated 28.08.2025.
 5. The court has considered the notice of motion dated 29.05.2025, the replying affidavit in opposition thereto as well as the submissions on record. The court is of the view that there are two main issues which arise for determination herein, namely;
 - a. Whether the 1st defendant has made out a case for a stay of execution pending appeal.
 - b. Who shall bear costs of the application.
 6. Order 42 rule 6(2) of the Rules on stay of execution stipulates as follows;

“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.”
 7. It is evident that whereas the impugned judgment was passed on 04.12.2024 the 1st defendant did not move the court for stay until 30.05.2025 when the instant application was filed. The court finds no plausible explanation for the delay of nearly 6 months in filing the application. The court is unable to agree that the 1st defendant genuinely believed that none of the prayers granted in the judgment were executable. It would appear that the 1st defendant's application was an afterthought which was triggered by the filing of a party and party bill of costs by the plaintiff.
 8. The court is unable to find evidence of substantial loss on the part of the 1st defendant if a stay is not granted. The court is also unable to discern any risk of the intended appeal being rendered nugatory or a mere “academic exercise” as put by the 1st defendant. The order for rectification of a land registrar is



a reversible order. A rectification order can be completely reversed in the event of the intended appeal being successful. There is no suggestion or demonstration that the plaintiff intends to dispose of the suit property during the pendency of the intended appeal.

9. The court is not satisfied that the intended appeal may be rendered nugatory if the plaintiff's bill of costs is taxed. The court is not satisfied that a similar result shall arise even if the taxed costs are paid. There is no evidence on record to show that the 1st defendant shall encounter serious hardship in raising the taxed costs or that the plaintiff shall be unable to refund the amount if the intended appeal is ultimately successful. The plaintiff is a public body (a state corporation) which is still a going concern hence it is presumed to be capable of making a refund.
10. The upshot of the foregoing is that the court is not satisfied that the 1st defendant has made out a case for the grant of a stay pending appeal either with respect to costs or the other excusable remedies granted by the trial judge. As a result, the 1st defendant's notice of motion dated 29.05.2025 and filed on 30.05.2025 is hereby dismissed with costs to the plaintiff.

Orders accordingly.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 13TH DAY OF NOVEMBER, 2025.

.....

Y. M. ANGIMA

JUDGE

In the presence

Gillian – Court Assistant

Mr. Karina for the plaintiff

Ms. Oruta for the 1st defendant

No appearance for the 2nd to 5th defendants

