



Sana Industries Limited v Obiera (Employment and Labour Relations Appeal E231 of 2025) [2025] KEELRC 3203 (KLR) (13 November 2025) (Ruling)

Neutral citation: [2025] KEELRC 3203 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E231 OF 2025**

**JW KELI, J
NOVEMBER 13, 2025**

BETWEEN

SANA INDUSTRIES LIMITED APPELLANT

AND

MARY MOKEIRA OBIERA RESPONDENT

RULING

1. The Appellant filed an application by way of Notice of Motion dated 11th April, 2025 brought Under Order 40 Rule 6 and 7, Order 50 Rule 3 and Rule 6, Section 1A & 3A of the *akn ke act 1924 3 Civil Procedure Act*, Chapter 21 Laws of Kenya, (Rule 2(3) of the High Court (Practice and Procedure) Rules Section 10 *akn ke act 1967 16 Judicature Act* Cap 8 Laws of Kenya) and all other enabling provisions of the law, for Orders:-
 1. spent
 2. That this Honourable Court be pleased hear the Application filed herewith under certificate of urgency as this application is extremely urgent.
 3. That this Honourable Court be pleased to stay the execution of the Judgement and Decree of this Honourable court issued on 24th day of June 2025 pending the hearing and determination of this Application.
 4. That this Honourable be pleased to grant an Order for stay of all proceedings in the trial Court, pending the hearing and determination of the appeal.
 5. That our client is ready to issue a security of the decretal sum in form of a motor vehicle logbook.
 6. That the Application be heard inter parties on such date and time as this Honourable Court may direct.



7. That The costs of this Application abide the outcome of the Appeal.

Grounds Of The Application

2.

- a. That judgement in the subordinate court matter was delivered on 24th June 2025 wherein the respondent herein was awarded Kshs 797,066.00.
 - b. That immediately thereafter the Applicant Appellant through their advocates sought for 30 days stay of execution of the Judgement and leave to appeal the said decision.
 - c. That the prayer for stay of execution and leave was granted.
 - d. That the duration given for stay of execution and leave to appeal granted is set to expire on 24th July 2025.
 - e. That the Applicant Intended Appellant is dissatisfied and aggrieved by the said Judgment and has opted to Appeal the said the entire judgment.
 - f. That the Applicant's Intended Appellant's intended Appeal raises pertinent issues and has a high chance of success.
 - g. That the applicant is ready to provide security for the decretal sum being the original logbook for motor vehicle.
 - h. That unless the interim orders are granted, the Applicant will suffer irreparable damage hence it is in the best interest of justice that the application be certified urgent and orders granted as prayed.
 - i. That this Application will not occasion any prejudice to the Respondent.
 - j. That this Application has been done without any unreasonable delay.
 - k. That It is therefore in the interest of Justice that this Application is considered urgently and the reliefs sought granted.
 - l. That the applicant has met the minimum conditions for grant of stay pending appeal, by bringing the application timeously and offering security for the decretal sum.
3. The application was supported by the affidavit of Agnes Kagwiria sworn on the 24th July 2025 where she annexed the impugned judgment dated 24th June 2025 (AK-1), and a copy of the memorandum of appeal(KG2.). The court noted the affidavit was not commissioned.
 4. The application was opposed by the respondent through her replying affidavit sworn on the 22ND September, 2025 in opposition to the application
 5. The application was canvassed by way of written submissions. Both parties filed.

Issues for determination

6. The court having perused the submissions by the parties was of the considered opinion that the issues for determination were as follows-
 - a. Whether the applicant has satisfied the requirements for the grant of Orders of Stay of Execution pending hearing and determination of the Appeal?



- b. Who should bear the costs of this Application?

Whether the applicant has satisfied the requirements for the grant of Orders of Stay of Execution pending hearing and determination of the Appeal?

Applicant's submissions

7. Primarily, the Appellant is seeking stay of execution of the Judgment of the Honourable Diana Orago in MCELRC E086 OF 2024. The grounds upon which the application is premised exists on the face of the Notice of Motion and further elaborated in the Supporting Affidavit of Agnes Kagwiria, on behalf of the Applicant herein. The principles guiding the grant of a stay of execution pending appeal are well settled. These principles are provided for under Order 42 rule 6(2) of the Civil Procedure Rules which 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. Further to the above, stay may only be granted for sufficient cause and that the Court in deciding whether or not to grant the stay and that in light of the overriding objective stipulated in Sections 1A and 1B of the *akn ke act 1924 3 Civil Procedure Act*, the Court is no longer limited to the foregoing provisions. The courts are now enjoined to give effect to the overriding objective in the exercise of its powers under the *akn ke act 1924 3 Civil Procedure Act* or in the interpretation of any of its provisions. Section 1A(2) of the *akn ke act 1924 3 Civil Procedure Act* provides that "the Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective" while under section 1B some of the aims of the said objectives are; "the just determination of the proceedings; the efficient disposal of the business of the Court; the efficient use of the available judicial and administrative resources; and the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties."
8. From the foregoing, the Applicant submits that for stay of execution of a decree or order pending appeal is obliged to satisfy the conditions set out in Order 42 Rule 6(2), aforementioned: namely (a) that substantial loss may result to the applicant unless the order is made, (b) that the application has been made without unreasonable delay, and (c) that such security as the court orders for the due performance of such decree or order as may ultimately be binding on the applicant has been given. This position was similarly upheld in *Antoine Ndiaye v African Virtual University* [2015] eKLR. "that substantial loss may result to the applicant unless the order is made" 11. What is substantial loss was discussed in the case of *James Wangalwa & Another vs. Agnes Naliaka Cheseto* [2012] eKLR, where the court stated that: "No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. 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 so 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 jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory." Notably, in the impugned judgment, the trial magistrate failed to apportion liability to the Respondent despite noting that she absconded duty, which then entitled the Appellant to terminate her employment. The effect of the said judgment is that the excessive damages were awarded when the Respondent in fact absconded duty, hence abetting her own dismissal from employment. There also now exists the apprehension that the Respondent may commence execution



proceedings against the Applicant on account of the judgment, which the Applicant seeks to be set aside by the appellate court. Due to the unpredictability of the mode of execution the Respondent may prefer to fulfill the judgment, the Applicant stands to suffer irreparable harm, as the subject of the appeal, being quantum. The Respondent has equally not demonstrated that he is able to refund the sum if the appeal succeeds. The Respondent submits that this further buttresses his point that the substance of the subject matter of the suit may be lost should stay pending appeal not be granted. Reliance is placed in the case of *RWW v EKW* [2019] eKLR, considered the purpose of a stay of execution order pending appeal, in the following words: “The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.”⁹. Indeed to grant or refuse an application for stay of execution pending appeal is discretionary. The Court when granting the stay however, must balance the interests of the Appellant with those of the Respondent.” Vide the foregoing, the Applicant submits that it is therefore imperative that there exists a subject matter for the determination of the court during the hearing of the Appeal and this can only be possible if the instant Application is allowed in terms of staying the execution of the impugned judgment and orders thereof pending hearing and determination of the Appeal. Otherwise, the Appellant will suffer substantial loss and the whole Appeal will be futile to the detriment of the Applicant.

9. Furnishing of security – while the Applicant acknowledges that Order 42 (Rule 6) stipulates depositing of security of costs as a precondition for grant of stay pending appeal, the same is discretionary upon the courts. In the words of Justice Musyoka in *Simba Coach Limited v Kiriiyu Merchants Auctioneers* [2019] eKLR “There are no fast and hard rules on what and how much the security ought to be and in this case the court reserves its discretionary power to determine as per the circumstances of the case and the nature of the security.” Orders for security of costs have often been granted in cases where the Respondent has adduced sufficient reasons to substantiate the apprehension that the Applicant would be unable to pay the decretal sums should the appeal fail. The Applicant herein offered is ready to comply on furnishing security as the court will direct. . The Applicant avers it is currently operating on bank facility due to operational cost for the business which are straining liquidity and therefore this honourable court allows the Applicant to deposit part of the decretal sum. The Applicant avers that the nature of the business undertaken by the Applicant is extremely capital intensive, hence the need for additional cash flow. At the moment, the company is operating on an overdraft facility just to be able to meet its financial needs and hence pleads with this honourable to allow the applicant to deposit part of the decretal sum as the court directs. The Applicant avers that it would suffer substantial loss to an extent that some of its workers will be terminated to ensure it continues with its operations. In the matter of *Samvir Trustee Limited V Guardian Bank Limited* [2007] KEHC 2438 (KLR) the court held that: “...A stay would be overwhelming hindrance to the exercise of the discretionary powers of the court... The Court in considering whether to grant or refuse an application for stay is empowered to see whether there exist any special circumstances which can sway the discretion of the court in a particular manner. But the yardstick is for the court to balance or weigh the scales of justice by ensuring that an appeal is not rendered nugatory while at the same time ensuring that a successful party is not impeded from the enjoyment of the fruits of his judgement. ... At the stage of the application for stay of execution pending appeal the court must ensure that parties fight it out on a level playing ground and on equal footing in an attempt to safeguard the rights and interests of both sides. The overriding objective of the court is to ensure the execution of one party’s right should not defeat or derogate the right of the other. The Court is therefore empowered to carry out a balancing exercise to ensure justice



and fairness thrive within the corridors of the court. Justice requires the court to give an order of stay with certain condition.”

The Respondent’s submissions

10. Whether a logbook is the worst form of security, and what is the jurisprudence on the same? It is well settled in law the Conditions for Stay pending Appeal as per Order 42 rule 6 of the Civil Procedure Rules. The court has discretion to grant a stay, but only if the applicant satisfies the three cardinal elements for a stay pending Appeal., it is well settled in law that a security should be stable and easily realizable; Order 42, Rule 6 of the Civil Procedure Rules, 2010 , which provides as follows: - (2)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. The courts have time and again rejected logbooks as a form of security, citing that a logbook is the worst form of security and the same is not security at all. We are guided by the case of *Esri Star Ltd & Another –versus- Sila Oweshiwani* [2018] eKLR “ The court described a motor vehicle (or trailer) as one of the ‘worst forms of security’ for a stay of execution involving a money decree.” In the Civil Appeal E031 of 2021, *Mwalimu David Vs Teachers Service Commission* [2022] KEHC 835 (KLR), the court held that “Offering a vehicle logbook as security was inadequate, stating that it was “a worse form of security and amount to no security at all, since there is no guarantee that by the time the appeal is determined, the vehicle will be of the same value or available at all ... security offered in the circumstances was not satisfactory.” The Applicant has stated it is ready to give security in the form of a Motor Vehicle logbook, but it has not provided the details of the said motor vehicle. In the supporting affidavit by Agnes Kagwira, she states,” that the respondent is ready to provide security for the appeal, being a motor vehicle original log book.” The applicant has not provided a copy of the said motor vehicle logbook. Furthermore, the applicant has not attached a valuation report for the alleged motor vehicle to the court for assessment of its adequacy. In light of the above, the courts have rejected the proposal of depositing a logbook and have ordered the applicant to deposit the decretal amount. We are guided by the case of *Barasa –versus- Nambale (civil Appeal E134 OF 2024)* [2025] KEHC 4987 (KLR), the applicant proposed to deposit a logbook as security. The court rejected it (or at least insisted it was insufficient without valuation, etc.), citing the same concerns about depreciation, loss, or the vehicle not being available at the time of the appeal. The court required instead a cash deposit. We submit that these are mere utterances by the applicant intended to delay justice, which ought not to be entertained within the corridors of justice. This being a money decree, we humbly submit that the same can only be adequately secured by depositing the decretal sum of Kshs. 797,066 = into a joint interest-earning account to be held by advocates for both parties, and a deposit of the said amounts in court. We further submit that the motor vehicle would not serve the purpose of security. The motor vehicle would still be in the use and control of the Appellant. The same being a movable property is prone to depreciation. It is common knowledge that its value will continue to depreciate and one cannot say with certainty the value of the motor vehicle at the conclusion of the Appeal. . Furthermore, the Appellant will still be forced to pursue execution against the Appellant in the event the appeal is unsuccessful and as such the motor vehicle does not serve the purpose of security for the money decree thus defeating the purpose of having it as security. 19. Our courts have severally held that the purpose of security is to ensure that if the appeal is unsuccessful, the decree holder will not have to initiate execution proceedings where the decree is a money decree. This was held in the case of *Gianfrano Manenthi & Another –versus- Africa Merchant Assurance Company Ltd* (2019) eKLR, where the court stated; “Further, order 42 should be seen from the point of view that a debt is already owed and due for payment to the successful litigant in a litigation before a court which has delivered the matter in his favour. This is therefore to provide a



situation for the court that if the appellant fails to succeed on appeal, there could be no return to status quo on the part of the plaintiff to initiate execution proceedings where the judgment involves a money decree. The court would order for the release of the deposited decretal amount to the respondent in the appeal. In *Arun C Sharma –vsashana Raikundalia T A Rairundalia & Co. Advocates justice Gikonyo*, the court stated that; “The purpose of the security needed under Order 42 is to guarantee the due performance of such decree or order as may ultimately be binding on the applicant. It is not to punish the judgment debtor Civil process is quite different because in civil process the judgment is like a debt hence the applicants become and are judgment debtors in relation to the respondent. That is why any security given under Order 42, Rule 6 of the Civil Procedure Rules, acts as security for the due performance of such decree or order as may ultimately be binding on the applicants. I presume the security must be one which can serve that purpose.” Thus the objective of the legal provisions on security was never intended to fetter the right of appeal. It was also put in place to ensure that the courts do not assist litigants in delaying execution of decrees through filing vexatious and frivolous appeals. In any event, the issue of the deposit of security for due performance of the decree is not a matter of willingness by the applicant but for the court to determine. That he who seeks equity must do equity. The Respondent is thus apprehensive that even in the very likely event that the appeal is dismissed, she will be forced to proceed with execution to recover the decretal sum, thus rendering the purpose of security nugatory. We humbly submit that a security for the decree must be adequate and ought to ensure that the Respondent can get his money without any difficulties in the event the appeal is unsuccessful. We find guidance in the case of *Matata & Another –versus- Rono & Another (civil Appeal E034 OF 2024) (2024) KEHC 2799 (KLR)*, where the court stated; “The court must similarly consider the overriding objective and balance the interest of the parties to the suit while considering the issue of security to be offered. The law is that where the applicant intends to exercise his undoubted right of appeal, and in the event, that he were eventually to succeed, he should not be faced with a situation in which he would find himself unable to get back its money. Likewise, the respondent who has a decree in his favour should not, if the applicant were eventually to be unsuccessful in its intended appeal, find it difficult or impossible to realize the decree. This is the cornerstone of the requirement for security.

11. In a nutshell, the proposed security does not offer protection to the Respondent, and we urge the court to so find. We further submit that in the event the court is inclined to allow the Application, we urge the court to order the Appellant to deposit the entire decretal sum of Kshs. 797,066 = in a joint interest-earning bank account to be held by the advocates for the parties within 30 days.

Decision

12. Rule 73 of the Employment and Labour Relations Court Rules of 2024 provides as follows-

‘(2) Rules on execution or stay of execution of an order or decree of the Court shall be in accordance with the Civil Procedure Rules.’ The relevant rule under the Civil Procedure Rules is Order 42 Rule 6 to wit- ‘6. Stay in case of appeal [Order 42, rule 6]

(1)No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal



is preferred may apply to the appellate court to have such order set aside.(2)No order for stay of execution shall be made under subrule (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.”

13. The court determined there was no unreasonable delay in filing the application. Since this is a money decree, the court believed that the respondent's failure to file an affidavit of means demonstrating their ability to refund the money if paid in the event the appellant was successful on appeal demonstrated a substantial risk of the appellant losing any paid money. This risk could make the appeal nugatory.
14. On the issue of security for performance of the Decree- the respondent submitted that the applicant had not proved ownership of the motor vehicle it submitted as security as it has not attached an official search for the motor vehicle. The Respondent is further opposed to the proposed security as being inadequate. The proposed security offers no security at all for the decreed amount. The decretal sum as per the judgment of the trial court is Kshs. 797,066 plus costs and interest. The respondent noted that the Applicant has offered the same motor vehicle as security of the decree. The respondent contended the best security was deposit of the decretal sum in joint interest earning account. The applicant in the application asked for reasonable conditions of security stating that it has taken facilities for the business.
15. The condition of security is 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. (section 42(6) of the Civil Procedure Rules). The court orders as security that ½ of the decretal sum be deposited in joint interest earning account held by advocates for both parties.
16. In conclusion, the court allows the application as follows-
 - A. That this Honourable Court be pleased to issue order of stay the execution of the Judgement and Decree of this Honourable court issued on 24th of June 2025 pending the hearing and determination of the appeal in ELRCA E231 OF 2024 and on condition that the applicant deposits half of the decretal sum in joint interest earning account held by advocates of both within 30 days.
 - B. That this Honourable Court be pleased to issue order of stay the execution of the Judgement and Decree of this Honourable court issued on 28th of June 2025 pending the hearing and determination of the appeal in ELRCA E232 OF 2024 and in on condition that the applicant deposits half of the decretal sum in joint interest earning account held by advocates of both within 30 days.
 - C. The respondent is awarded costs of the application as the decretal sum remains unpaid and to cover the prejudice suffered by this Order.
 - D. The record of appeal be filed in 30 days. Mention on the 15th December 2025 to confirm status of the record of appeal.
17. It is so Ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 13TH DAY OF NOVEMBER, 2025.

J.W. KELI

JUDGE



In the presence of

C A Otieno

Applicant- Eredi

Respondent- Muthini h b Munyungu

