



John & 4 others v Kenya Pipeline Company; National Environment Management Authority (Interested Party) (Environment and Land Case E002 of 2023) [2025] KEELC 5803 (KLR) (Environment and Land) (30 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5803 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND CASE E002 OF 2023
EK WABWOTO, J
JULY 30, 2025**

BETWEEN

**GLADYS JOHN 1ST PLAINTIFF
BERNARD DEGHUA 2ND PLAINTIFF
JANE MATANO 3RD PLAINTIFF
CYRILL MWAVADU 4TH PLAINTIFF
MARTHA MWAKIA 5TH PLAINTIFF**

AND

KENYA PIPELINE COMPANY DEFENDANT

AND

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY INTERESTED PARTY

RULING

1. The Applicant moved this court vide an application dated 3rd July 2025 seeking seeking orders staying the judgment delivered by this court on 27th February 2025.
2. The application is premised on the grounds on the face of it and further supported by the Affidavits of Nelson Nyaduwa its Ag. Chief Legal Officer sworn on 3rd July 2025 and 22nd July 2025 respectively. It was deposed inter alia that the Applicant was dissatisfied with the judgment of the court and has since filed an appeal and that the Respondents have initiated the execution process which may render the Appeal nugatory if stay is not granted.



3. The application was opposed by the Respondents vide a Replying Affidavit sworn by Jane Matano on 8th July 2025. It was deposed inter alia that the application is made in bad faith and meant to deny them the fruits of their judgment. It was also averred that the applicant has not satisfied the conditions for stay. The appeal has no chances of success and the applicant has not demonstrated what substantial loss it will suffer if stay of execution is not granted. It was also averred that the application has been made after an unreasonable delay. The court was urged to dismiss the application.
4. During the plenary hearing of the application, Learned Senior Counsel Mr. Mohamed Nyaoga and Learned Counsel Mr. Gerald Mwangi made oral submissions on behalf of the Applicant while Learned Counsel Mr. Kenneth Amondi submitted on behalf of the Respondents.
5. Having considered the application, the rival affidavits filed, submissions made and the cited authorities/ case law, the issue for determination is whether the orders sought by the applicant herein are merited.
6. As per the provisions of Order 42 rule 6 of the Civil Procedure Code, the Applicant is required to satisfy all the requirements set out therein to be entitled to orders of stay of execution. The requirements as per the above provision are threefold: whether there is sufficient cause; whether there is likelihood of substantial loss and whether security for the due performance of the decree has been provided.
7. In considering an application for stay of execution I am guided by the case of *Butt vs Rent Restriction Tribunal Civil App No. NAI 6 of 1979* (Madan, Miller and Porter JJA) where the following guidelines were given:

“The power of the court to grant or refuse an application for a stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal.

The general principle in granting or refusing a stay is; if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverse the judge’s discretion. A judge should not refuse a stay if there are good grounds for granting it merely because in his opinion a better remedy may become available to the applicant at the end of the proceedings. The court in exercising its discretion whether to grant or refuse an application for stay will consider the special circumstances of the case and its unique requirements.”

8. It is clear that for the Court to grant stay of execution, the Applicant need to satisfy the Court that it will suffer substantial loss. In the case of *Century Oil Trading Company Ltd vs. Kenya Shell Limited Nairobi (Milimani) HCMCA No. 1561 of 2007* the court stated: -

“The word “substantial” cannot mean the ordinary loss to which every judgment debtor is necessarily subjected when he loses his case and is deprived of his property in consequence. That is an element which must occur in every case and since the Code expressly prohibits stay of execution as an ordinary rule it is clear the words “substantial loss” must mean something in addition to all different from that...Where execution of a money decree is sought to be stayed, in considering whether the applicant will suffer substantial loss, the financial position of the applicant and that of the respondent becomes an issue.

The court cannot shut its eyes where it appears the possibility is doubtful of the respondent refunding the decretal sum in the event that the applicant is successful in his appeal. The court has to balance the interest of the applicant who is seeking to preserve the status quo



pending the hearing of the appeal so that his appeal is not rendered nugatory and the interest of the respondent who is seeking to enjoy the fruits of his judgment.”

9. In Bungoma HC Miscellaneous Application No 42 of 2011 James Wangalwa and another Vs. Agnes Naliaka Cheseto the court further discussed what substantial loss entails:

“The application 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. This is what substantial loss would entail.”

10. The Applicant should not only state that it is likely to suffer substantial loss but must also prove that it will suffer loss. The Applicant bears the burden of proving that by refusal to grant stay of execution it stands to suffer substantial loss.

11. As regards deposit of security, the court observed in the case of Gianfranco Manenthi & Another vs Africa merchant Assurance Co. Ltd [2019] eKLR it was held that:-

“The applicant must show and meet the condition of payment of security for due performance of the decree. Under this condition, a party who seeks the right of appeal from a money decree of the lower court for an order of stay must satisfy this condition on security. In this regard, the security for due performance of the decree under Order 42 Rule 6(1) of the Civil Procedure Rules, it is trite that the winner of litigation should not be denied the opportunity to execute the decree in order to enjoy the fruits of his judgment in case the appeal falls.

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....

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 courts do not assist litigants to delay execution of decrees through filing vexatious and frivolous appeals. In any event, the issue of deposit of security for due performance of decree is not a matter of willingness by the applicant but for the court to determine. Counsel for the applicant submitted that he is ready to provide a bank guarantee as security for due performance of the decree.”

12. The Court must similarly consider the overriding objective and balance the interest of the parties herein while considering the issue of security to be offered. The law is that where the applicant intends to exercise its undoubted right of appeal, and in the event, that it was eventually to succeed, it should not be faced with a situation in which it would find itself unable to get back its money. Likewise, the respondents who have a decree in their 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.



13. The issue of adequacy of security was dealt with by the Court of Appeal in *Nduhiu Gitahi vs. Warugongo* [1988] KLR 621; 1 KAR 100; [1988-92] 2 KAR 100 where the Court of Appeal expressed itself as follows:

“The process of giving security is one, which arises constantly. So long as the opposite party can be adequately protected, it is right and proper that security should be given in a way, which is least disadvantageous to the party giving the security. It may take many forms. Bank guarantee and payment into court are but two of them.

So long as it is adequate, then the form of it is a matter, which is immaterial. In an application for stay pending appeal the court is faced with a situation where judgement has been given. It is subject to appeal. It may be affirmed or it may be set aside. The court is concerned with preserving the rights of both parties pending that appeal. It is not the function of the court to disadvantage the defendant while giving no legitimate advantage to the plaintiffs. It is the duty of the court to hold the ring even-handedly without prejudicing the issue pending the appeal. For that purpose, it matters not whether the plaintiffs are secured in one way rather than another. It would be easier for the defendants or if for any reason they would prefer to provide security by a bank guarantee rather than cash. There is absolutely no reason in principle why they should not do so...The aim of the court in this case was to make sure, in an even-handed manner, that the appeal would not be prejudiced and that the decretal sum would be available if required. The respondent is not entitled, for instance, to make life difficult for the applicant, so as to tempt him into settling the appeal. Nor will either party lose if the sum is actually paid with interest at court rates. Indeed, in this case there is less need to protect the defendant because nearly half the sum will have been paid and the balance was at one stage open to negotiation to reduce it”.

14. The Applicant did state with regard to the issue of security that, it was ready to provide a guarantee to secure the decretal sum.
15. Guided by the above authorities, I find that the Applicant has satisfied this court that they it will suffer substantial loss if the entire decretal sum is paid to the Respondents before the appeal is heard and determined in view of the fact that if the Respondents are allowed to execute the judgement then the appeal will be rendered nugatory. However, the court is also aware of the fact that the Respondents are entitled to the fruits of their judgment. In view of the foregoing and for the interest of justice this court shall grant a stay limited for a particular duration so that the Applicant herein does not sit back and fail to prosecute its appeal lodged at the Court of Appeal.
16. Consequently, the following orders are hereby issued in respect to the application dated 3rd July 2025;
- i. An order of stay of execution against the judgment of this court is hereby granted for 120 days on condition that the Applicant provides a bank guarantee from a reputable financial institution for the entire decretal sum of Ksh 204,300,691.00
 - ii. Costs of the application to abide the outcome of the appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH DAY OF JULY 2025.

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Gerald Mwangi for the Applicant.



Ms. Mwangi for the Respondents.

N/A for the Interested Party.

Court Assistant: Mary Ngoira.

