



REPUBLIC OF KENYA



**KENYA LAW**  
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**Task Investments Limited v Eldoret Packers Limited (Civil Appeal  
E214 of 2024) [2025] KEHC 19097 (KLR) (19 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 19097 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CIVIL APPEAL E214 OF 2024  
E OMINDE, J  
DECEMBER 19, 2025**

**BETWEEN**

**TASK INVESTMENTS LIMITED ..... APPLICANT**

**AND**

**ELDORET PACKERS LIMITED ..... RESPONDENT**

**RULING**

1. By way of Notice of Motion dated 26<sup>th</sup> February 2025, the Applicant seeks the following orders;
  - a. Spent
  - b. Spent
  - c. This Honourable Court be pleased to grant an order staying execution of the judgment and/or the decree and all other execution processes in Eldoret Magistrates Court Civil Case Number 167 of 2017 pending the hearing and determination of the Appeal.
  - d. The costs of this application be-provided for.
2. The Application is expressed to be brought under sections 1A, IB, 3A of the *Civil Procedure Act*, Order 22 rule 22, and Order 51 Rule 1 of the Civil Procedure Rules, Article 48 and 50 of *the Constitution* of Kenya and all other enabling provisions of the law.
3. The Application is premised on the grounds on the face of it and the averments in the supporting affidavit sworn by Wesley Keter, the secretary of the Applicant. He deponed that the trial Court entered Judgment of Kenya Shillings six hundred and thirty five thousands and fifty five shillings Only (Kshs, 635,055/= plus costs and interests against the Applicant, annexing and marking the Judgment Marked as TS1. Further, that they lodged an Appeal on 11<sup>th</sup> October, 2024 being Eldoret High Court Civil Appeal No. E24 of 2024 annexing and marking a copy of the Memorandum of Appeal as TS2. He



urged that they also wrote to the Court Administrator requesting proceedings for purposes of the Appeal, annexing the Letter to the Executive Officer as TS3.

4. The deponent averred that the appeal which was lodged on 11<sup>th</sup> October, 2024 is pending hearing by the Appellate Court and has high chances of success. Further, that it is necessary that this Court does issue an Order staying execution so as not to render this Appeal nugatory. Additionally, that there is an impending threat of execution by the Respondent who have already instructed auctioneers who are in the process of execution. He annexed the letter dated 10<sup>th</sup> February 2025 seeking for Warrants of Attachment and marked it as TS4. He further deponed that they stand to suffer substantial loss and damage if orders sought herein are not granted and further, that the appeal will be rendered nugatory. Urging that the Application has been filed timeously, and that the Respondent will not be prejudiced in any way if the orders sought herein are granted, he prayed that the execution of judgment be stayed pending the hearing and determination of the appeal.

### **Replying Affidavit**

5. The Respondents filed an affidavit dated 4<sup>th</sup> March 2025 sworn by Rajesh Chandulal Kachela in opposition to the Application. He deponed that the Application is incompetent, improper and has not been brought in good faith and further, that the same is fatally defective. Additionally, that it lacks merit and substratum and is merely an academic exercise. The deponent averred that the Applicant has not demonstrated evidence of substantial loss in the event that the stay was not granted. Further, that it is the duty of the Applicant to show that it will suffer substantial loss if stay is not granted and that material particulars of loss must be shown by way of an affidavit by the Applicant; it is not enough for one to only state that loss will be suffered. He reiterated that the Applicant has not sworn an affidavit to show whether he will suffer substantial loss if stay is not granted.
6. The deponent averred that the said Application which has been made as an afterthought will entirely prejudice and occasion injustice upon the Respondent's rights and wishes to enjoy the fruits of the judgment. He maintained that the Application is not merited and prayed that the same be dismissed with costs.
7. The parties were directed to file submissions on the Application. The Applicant filed submissions dated 16<sup>th</sup> June 2025 whereas the Respondent filed submissions dated 18<sup>th</sup> March 2025.

### **Applicants' Submissions**

8. Learned Counsel for the Applicant submitted that the conditions for granting an order for stay of execution pending appeal are set out in Order 42 Rule 6 sub-rule 1 and 2 of the Civil Procedure Rules, 2010 which specifies the circumstances under which either the trial court or appellate court may order stay of execution pending appeal. Counsel submitted that the court's judgment was delivered on 12<sup>th</sup> September, 2024 and the Appellant preferred an Appeal on 11<sup>th</sup> October, 2024. That the Applicant filed this instant Application for stay of execution and the same set out for hearing. The Applicants requested for typed proceedings in the matter to enable them lodge an appeal on 11<sup>th</sup> October 2024 and therefore, the Applicants have approached equity swiftly and not indolently hence the Application ought to succeed.
9. Counsel for the Applicant urged that if the Application is not allowed, they are likely to suffer substantial loss as the appeal will be rendered nugatory. He cited the cases of Kenya Airports Authority vs Mitu Bell Welfare Society & Anor (2014) eKLR in this regard. Additionally, counsel urged that the Applicant is willing to furnish security if the court will direct so for the due performance of such decree as may ultimately be binding on them, in a joint interest earning account. He placed reliance on the



court's reasoning in Eldoret HCCC No. 23 of 1997, Samson Kiplimo Joel -vs- David Kipsang Boit & Anor and James Finlay (K) Ltd -vs- Jared Otworu Mogere Civil Appeal No. 40 of 2009 (Kericho) among numerous other cases in this regard.

10. Counsel urged that if the Respondent is allowed to execute and in the event this appeal succeeds, the Respondent is a person of straw and she will not be able to refund the said decretal sum and any other costs incidental thereto, hence it is prudent that stay of execution be granted pending the hearing and determination of the appeal filed by the defendants. Citing the case of Edward Kamau & Anor -vs- Hannah Mukui Gichuki & Anor (2015) eKLR on the shift of burden of proof when an Applicant expresses a reasonable fear that a Respondent would be unable to pay back the decretal sum.
11. On costs, counsel contended that this Application is merited and the same be allowed with costs to them citing Section 27 of the *Civil Procedure Act* in support of the same.

### **Respondents' Submissions**

12. Learned counsel for the Respondent submitted that grant of stay of execution is governed by Order 42 Rule 6 of the Civil Procedure Rules. He urged that the duty of the court is, as far as possible, to balance the interests of the parties and that thus would require safeguarding the interests of the decree hold to the decretal sum, but also ensuring that should the appeal succeed it will not have been rendered nugatory by earlier payment to a party who is unable to repay the decretal sum upon the success of the appeal.
13. On substantial loss, counsel cited the definition in James Wangalwa & another v Agnes Naliaka Cheseto (2012) eKLR, and the holding in Kenya Shell Limited vs. Kibiru [1986] KLR 410. Counsel submitted that the Respondent have shown in their Replying Affidavit is that if the decretal sum, costs and interest of the claim is paid they will be able to refund the amount were Applicants appeal to succeed. In other words, the Respondent contend that the Applicants has not shown that they have no means and, therefore, they are in a position to refund the money should the appeal succeed.
14. Further, that they have also deponed that the Applicant has not shown that he has the means to pay the decretal amount if the appeal is dismissed. He cited the case of Equity Bank Ltd v Taisa Adams Company Ltd [2006] eKLR, urging that the mere fact that the decree holder is not a person of means does not necessarily justify her from benefiting from the fruits of his judgement. On the other hand, the general rule is that the court ought not to deny a successful litigant the fruits of judgement save in exceptional circumstances where to decline may well amount to stifling of the right of the unsuccessful party to challenge the decision in the higher Court.
15. Counsel submitted that the Applicant has not been clear what substantial loss he will suffer. That he has a duty to satisfy the court that he will indeed suffer something special that cannot be, undone should execution be allowed to proceed. He did not state that the Respondent is impecunious person who would not be able to refund the decretal sum if paid.
16. On security, he urged that the Court is entitled to take into account the fact that no such security has been offered in deciding an Application thereunder, urging that the Respondents agree with the position in Mwaura t/a vs. Kenya Bus Services Ltd & 4 Others [2015] eKLR. He submitted that the law is that where the Applicant intends to exercise its undoubted right of appeal, and in the event it were 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 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. He urged that the Applicant should



deposit the entire decretal sum into a joint interest earning account in the names of the two advocates for the parties.

17. The Respondents urged the court to dismiss the Application and allow the Plaintiffs/Respondent's to enjoy the fruits of his judgment with costs of this Application.

### **Analysis & Determination**

18. In considering the pleadings and submissions, it is my considered opinion that the issue for determination is;

Whether the Applicant has met the threshold for grant of stay of execution pending appeal

19. 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.

19. Substantial loss was defined in the case of Tropical Commodities Supplies Ltd & others v International Credit Bank Limited (in Liquidation) [2004] EALR 331 where the Court of Appeal rendered itself thus;

“...substantial loss does not represent any particular mathematical formula, rather, it is a quantitative concept. It refers to any loss, great or small, that is of real worth or value and as distinguished from a loss without value or loss that is merely nominal...”

20. Further, the purpose of security was clearly enunciated in Arun C. Sharma vs. Ashana Raikundalia t/ a Rairundalia & Co. Advocates & 2 others [2014] eKLR, where the court stated: -

“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 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.”

20. I have considered the Application, the submissions filed as well as the Statutory and Case Law as herein summarised and being satisfied that the Application was filed timeously, I find that the same has merit and is therefore allowed as hereunder;

- a. That an order staying the execution of the judgment and/or the decree and all other consequential orders in Eldoret Magistrates Court Civil Case Number 167 of 2017 be and is now hereby issued pending the hearing and determination of the Appeal.



- b. The Applicant is to pay directly to the Respondent half the decretal amount and deposit the remaining half in a joint interest earning account in the name of the Advocates for the parties within 45 days from the date of this Ruling failure to which these orders shall be deemed to have lapsed and the Respondent is at liberty to execute for the entire decretal amount.
- c. The Applicant is to bear the costs of the Application.

**READ DATED AND SIGNED AT ELDORET ON 19<sup>TH</sup> DECEMBER 2025**

**E. OMINDE**

**JUDGE**

