

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT ELDORET

CAUSE NO. E023 OF 2022

(Before Hon. Lady Justice Maureen Onyango)

ALFRED KIPLAGAT ROTICH CLAIMANT
VERSUS
CHEMARTIN TEA COMPANY LIMITED
RESPONDENT

RULING

1. Vide An application dated 3rd November, 2025 the Applicant who was Respondent in the suit and the Judgment debtor herein seeks orders of stay of execution pending appeal. The Application is made under section 1(A), 1(B) and 3(A) of the Civil procedure Act, Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules.
2. The application is supported by the grounds on the face thereof and the supporting affidavit of MOSES CHEPKWONY, the Estate Manager of the Applicant. In the grounds and the affidavit it is stated that the Applicant is dissatisfied with the decision of this court and has lodged an appeal to the Court of Appeal, that it has an arguable appeal with overwhelming chances of success, and that it would suffer substantial loss

should the orders of stay not be granted as the appeal would be rendered nugatory, noting that the Claimant is a man of straw with no means of refunding the decretal sum should the appeal succeed.

3. It is further the averment of the Applicant that it is willing to deposit security in the form of a bank guarantee as it is currently facing numerous employment related claims before different courts with pending judgments, some of which have been finalized as well as production related costs ordinarily associated with its daily operations. That as such the Respondent is willing and ready to provide security in the form of a bank guarantee pending the hearing and determination of the appeal which would be released to the Respondent if it is found on appeal that the Claimant is in fact entitled to the sums as awarded by this Honourable Court.
4. The Applicant attached copies of several judgments as a bundle in annexure MC-2 containing the judgments in Kapsabet CM ELRC No. E013/2022 and Kapsabet M ELRC 3/2022 which are pending payments by the Applicant, being part of the bundle of pending matters against the Applicant.

5. It is further the averment of the Applicant that the application has been brought without unreasonable delay.
6. The Application was responded to through a replying affidavit of ALFRED KIPLAGAT ROTICH, the Claimant/Decree Holder sworn on 10th November, 2025 in which he deposes that whilst he is not opposed to the entire application, any stay granted should be conditional as the decree appealed from is a liquidated sum of money. He prays that half of the decretal sum be released to him while the other half is deposited in an interest earning account pending hearing and determination of the appeal.
7. The Claimant states that he is a man of means and he will be able to refund the decretal sum should the appeal be successful. He produced a copy of a letter of appointment by Kibenda Tea Estate at a salary of Kshs. 60,000 per month. It is his further averment that in his view the appeal is frivolous and has no chances of success.
8. The application was disposed of by way of written submissions. Both parties filed and exchanged submissions.

Determination

9. I have considered the application with the affidavit in support of the same and the replying affidavit. I have further considered the rival submissions of the parties. The issues that arise for determination are whether the Applicant meets the threshold for grant of the orders sought and what orders should issue.
10. Stay of execution pending appeal is elaborately provided for in Order 42 Rule 6 of the Civil Procedure Rules as follows:

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.

11. The principles for grant of stay of execution are thus proof of substantial loss, unreasonable delay and security for due performance of the decree. The court is also enjoined to ensure sufficient cause for grant of such orders.
12. The primary purpose of stay of execution is to preserve the status quo pending the hearing of the appeal as was held in **RWW v EKW [2019] eKLR**, where the court observed that:

“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.”

13. In **Butt v Rent Restriction Tribunal (1982) KLR** the Court gave guidance on how the court’s discretion should be exercised as follows –

“1. 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.

2. 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.

3. 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.

4. The Court in exercising its discretion whether to grant [or] refuse an application for stay will consider the special circumstances of the case and unique requirements. The special circumstances in this case were that there was a large amount of rent in dispute and the appellant had an undoubted right of appeal.

5. The Court in exercising its powers under Order XLI rule 4(2)(b) of the Civil Procedure Rules, can order security upon application by either party or on its own motion. Failure to put security for costs as ordered will cause the order for stay of execution to lapse.”

14. The Claimant/Decree Holder herein deposed and further submitted that he is able to refund the decretal sum should the appeal succeed. He submitted a letter of appointment by Kibenda Tea Estate for a salary of Kshs. 60,000 per month as evidence of means. This evidence was not contested by the Applicant.

15. The second requirement is that the Applicant provides security for the due performance of the decree. As is provided in Order 42 Rule 6(2), the purpose of security is to ensure due performance of the decree should the appeal not succeed. It is also intended to act as a sign of good faith to deter litigants who may file appeal only for the purpose of delaying the successful litigant from enjoying the fruits of his judgment, hence the requirement for the court to ensure sufficient cause and equity in granting orders of stay.
16. In an application for execution of a decree, especially where the application is in respect of a money decree, the court must balance the interests of both sides, as was stated by the Court of Appeal in **Absalom Dova vs. Tarbo Transporters [2013] eKLR**, where it stated: -

“The discretionary role of stay of execution pending appeal is designed on the basis that no one would be worse off by virtue of an order of the Court; as such order does not introduce any disadvantage, but administers the justice that the case deserves. This is in recognition that both parties have rights; the Appellant to his appeal which includes the prospects that the appeal will not be

rendered nugatory; and the decree holder to the decree which includes full benefits under the decree. The Court in balancing the two competing rights focuses on their reconciliation...".

17. In the instant case the Applicant has stated that it is willing to provide security as may be ordered by the court. The Claimant/Decree Holder has also deposed that he is not a man of straw and would be in a position to refund half of the decretal sum if paid to him, should the appeal succeed.
18. Flowing from the above, I find that the Applicant has satisfied this court on the requirements for grant of stay of execution pending appeal as stipulated under Order 42 Rule 6 of the Civil Procedure Rules. I further find that the Claimant /Decree Holder is not a man of straw.
19. Balancing the interests of both parties, it is my view that the Claimant is entitled to a portion of the award of the court while the balance can be secured by a bank guarantee as offered by the Applicant.
20. In the judgment of this court the Claimant was awarded the following:

- i. One month's salary in lieu of notice Kshs. 200,000
- ii. 13 days salary for January 2021 Kshs. 86,667
- iii. Pay in lieu of leave for 2020 Kshs 200,000
- iv. 10 months' salary compensation for
unlawful termination Kshs. 2,000,000

21. It is the view of this court that the Claimant be awarded items (i) to (iii) of the judgment and the balance be secured by a bank decree which must be kept valid until judgment in the appeal is rendered.

22. I accordingly allow the application dated 3rd November, 2025 on the following terms:

- (i) **That the Applicant pays the sum of Kshs. 486,667 to the Claimant decree Holder within 30 days**
- (ii) **That the Applicant deposits a bank guarantee to cover the sum of Kshs. 2,000,000 from a reputable bank acceptable to the Claimant within 30 days and the same remains valid until the judgment in the appeal is delivered.**

(iii) The costs of the instant application shall abide the outcome of the appeal.

**DATED, SIGNED AND DELIVERED VIRTUALLY ON
THIS 12TH DAY OF FEBRUARY, 2026**

**MAUREEN ONYANGO
JUDGE**