



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

MILIMANI LAW COURTS

ELC CASE NO. 1191 OF 2013

RAY PHARMACEUTICALS LIMITED.....1ST
PLAINTIFF

METROPOL ENTERPRISES LIMITED.....2ND
PLAINTIFF

VITAFOAM PRODUCTS LIMITED.....3RD
PLAINTIFF

NCP PAPER MILLS LIMITED.....4TH
PLAINTIFF

ANJU MOHANLAL SHAH.....5TH
PLAINTIFF

JINIT MOHANLAL SHAH.....6TH
PLAINTIFF

MOHANLAL DHARAMSHI SHAH.....7TH
PLAINTIFF

VERSUS

DEFENDANT

RULING

1. The Plaintiffs seek stay of execution of the court's Judgement delivered on 30th April 2025 on the grounds that the Plaintiffs wish to appeal against the courts Judgement which extinguished their proprietary rights on the **LR. No. 4953/2209, L.R. No. 4953/2159, L.R No. 4953/4064, L.R. No. 4953/2021, L.R. No. 4953/2206** that if the stay orders are not granted, the properties are likely to be alienated to such an extent that it would be impossible to restore them to their original state. The Plaintiffs thus seek the following orders;

1) This Application be certified as urgent and service thereof be dispensed with in the first instance.

2) Pending the inter parties hearing and determination of this Application, this Honourable court be pleased to grant a stay of execution of the judgement and decree of this Court delivered on 30th April, 2025.

3) Pending the hearing and determination of the intended appeal to the court of Appeal, this Honourable court be pleased to grant a stay of execution of the Judgement and decree of this court delivered on 30th April, 2025 and all consequential proceedings.

4) Costs of this Application be provided for.

2. The application is supported by the affidavit of Nihal Shah in which he states that in the absence of stay the appeal would be rendered nugatory. In response the Respondent averred that they are entitled to the fruits of their Judgement. The Respondent also took issue with the valuation reports attached to the Applicants affidavit. The Respondent further took issue with the representation of the 7th Defendant, an issue which the Applicants addressed in the further affidavit dated 18th August 2025.
3. On the 8th December 2025, the court directed that the application be canvassed by way of written submissions. Both counsels filed lists of authorities which the court has considered.

4. The principles guiding the grant of a stay of execution pending appeal are well settled. These principles are provided under **Order 42 rule 6(2) of the Civil Procedure Rules** which provides as follows:

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.

5. In **Vishram Ravji Halai vs. Thornton & Turpin Civil Application No. Nai. 15 of 1990 [1990] KLR 365,** the Court of Appeal held that whereas the Court of Appeal's power to grant a stay pending appeal is unfettered, the High Court's jurisdiction to do so under Order 41 rule 6 of the **Civil Procedure Rules** is fettered by three conditions namely,

establishment of a sufficient cause, satisfaction of substantial loss and the furnishing of security. Further the application must be made without unreasonable delay.

6. In **Silverstein -vs- Chesoni [2002]1 KLR 867** the Court held that:-

“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 a loss would render the appeal nugatory.”

7. The above position was further reinstated in the case of **Shell Ltd -vs- Kibiru & Another, Civil Appeal No. 97 of 1986**, Nairobi where it was stated that:-

“The application for stay made before the High Court failed because the 1st of the conditions was not met. There was no evidence of substantial loss to the applicant, either in the matter of paying the damages awarded which would cause difficulty to the applicant itself, or because it would lose its money, if payment was made since the Respondents would be unable to pay the money.”

8. The onus on the applicant to prove substantial loss was similarly addressed in **Antoine Ndiaye -vs- African Virtual University [2015] ECLR;** in which the court indicated as follows;-

“The onus of proving substantial loss and in effect that the Respondent cannot repay the decretal sum if the appeal is successful lies with the applicant; it follows after the long age legal adage that he who alleges must proof. Real and cogent evidence must be placed before the court to show that the Respondent is not able to refund the decretal sum should the appeal succeed.”

9. The onus on the applicant to prove substantial loss was similarly addressed in **Antoine Ndiaye -vs- African Virtual University [2015] ECLR;** in which the court indicated as follows;-

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be placed before the court to show that the Respondent is not able to refund the decretal sum should the appeal succeed.”

10. In addition to these well settled principles the courts have now recognized that **Section 1 A and B of the Civil Procedure Act** demands of the courts a responsibility to give effect to the overriding objectives which include; 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. This calls upon the court to not only consider whether the well settled principles of grant of stay have been met, but to delve deeper to determine what the ends of justice would require in each circumstance.
11. As the court seeks to discharge its role of ensuring justice to both parties, the court is enjoined to consider the rights of the decree holder who is entitled to the fruits of his Judgement and the rights of the Judgement Debtor Applicant who is entitled to have his day in court by being unfettered

in pursuit for justice. This is the balancing act so aptly described in **Machira T/A Machira & Co. Advocates vs. East African Standard (No 2) [2002] KLR 63** where it was held that:

“to be obsessed with the protection of an appellant or intending appellant in total disregard or flitting mention of the so far successful opposite party is to flirt with one party as crocodile tears are shed for the other, contrary to sound principle for the exercise of a judicial discretion. The ordinary principle is that a successful party is entitled to the fruits of his judgement or of any decision of the court giving him success at any stage. That is trite knowledge and is one of the fundamental procedural values which is acknowledged and normally must be put into effect by the way applications for stay of further proceedings or execution, pending appeal are handled. In the application of that ordinary principle, the court must have its sight firmly fixed on upholding the overriding objective of the rules of procedure for

handling civil cases in courts, which is to do justice in accordance with the law and to prevent abuse of the process of the court”.

12. In the instant case, there was no delay in filing the application, the Plaintiffs filed the application before the lapse of the 90 days granted by the court upon delivery of Judgement. The reasons for the delay in filing the appeal have been attributed to delay in obtaining proceedings. The value of the suit properties were presented in the valuation reports.

13. The overriding objectives of the **Civil Procedure Act** especially as it relates to the just determination of proceedings require the court to ensure that the ends of justice are met for both parties. This was clearly spelt out in the case of **Transporters Ltd. vs. Absalom Dova Lumbasi [2012] eKLR**, thus:

“The discretionary relief 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 which is not a question of discrimination.”

14. In considering the rights of the Defendant to fruits of their Judgement against the rights of the Plaintiffs to pursue their appeal, I find that the Plaintiffs are likely to suffer greater loss than the Defendants will suffer if stay is not granted.

15. The application is thus allowed in the following terms;

a) Stay of Execution pending appeal is granted pending the hearing and determination of the appeal

b) Costs of this application to be in the cause

**Dated, signed and delivered virtually at Kajiado this 12th
day of February 2026.**

JUDY OMANGE

JUDGE

In the presence of: -

Mr John Mbaluto with Ms Mwangi for the Applicant.

No appearance for the Respondent.

Peter Court Assistant.