



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAKURU**

**CIVIL APPEAL NO. E315 OF 2025**

**Waterbuck Hotel Limited.....APPLICANT/  
APPELLANT**

**- VERSUS -**

**Kenya Power & Lighting Company  
Limited.....RESPONDENT**

**RULING**

1. Before me is a Notice of Motion Application Dated 2<sup>nd</sup> December 2025 filed pursuant to Section 1A, 1B and 3A of the Civil Procedure Act Cap 21 Laws of Kenya, Order 42 Rule 6 (6) of the Civil Procedure Rules 2010 and all other enabling provisions of the law seeking the following reliefs;

**a) SPENT**

**b) SPENT**

**c) That, pending the hearing and determination of the present Appeal, this honorable court be pleased to issue an order of injunction in the exercise of its Appellate jurisdiction, restraining the Respondent, whether by itself, its servants, agents and/or assigns from disconnecting power supply, truncating the main or any supply line, removing the main meter or meters for electricity supply, or removing the main supply line from the supply pole in the Applicant's**

**hotel premises known as Hotel Water Buck in respect of Account Number 0533105-01.**

**d) That such orders be made as is just and expedient in the interest of justice.**

**e) That the costs of this application be provided for.**

2. The Application is premised upon the following grounds:

*a. That, the Applicants herein, being aggrieved by the Judgment of the honorable court delivered on the 21<sup>st</sup> day of November, 2025 has proffered an appeal, having filed a Memorandum of Appeal dated the 25<sup>th</sup> day of November, 2025 against the said Judgment.*

*b. That, the said appeal raises serious, weighty and triable issues of both fact and law and has high chances of success hence ought to be facilitated by injunctive orders preventing the Respondent from disconnecting power supply from the Applicant hotel.*

*c. That, the Applicants believe that, the subject appeal stands a good chance of success and that the appeal will be rendered nugatory if stay of execution of the judgment/decreed with respect to costs awarded to the Respondent is not ordered and injunctive orders restraining the Respondent from disconnecting power supply from the Applicant hotel pending its hearing and subsequent determination.*

*d. That, unless the orders sought herein are granted, the respondents will shortly proceed to execute the said judgment with respect to costs and almost certainly*

*disconnect power supply from the Applicant hotel subjecting the applicant to substantial and irreparable loss and damage rendering the intended appeal nugatory.*

- e. That, the potential harm that will be suffered by the Applicant if the orders of stay of execution of the judgment in respect to costs awarded to the Respondents and injunction against the disconnection of electricity supply to the Applicant's hotel premises are not issued far outweighs the potential hardship to the Respondent if said orders are granted. If the subject orders are not granted, the Applicant's property stands to be auctioned and sold and it stands to suffer loss of profits and/or business on account of lack of electricity to enable the running of the Applicant hotel.*
- f. That, on the other hand, if the orders sought herein are granted and in the event the Respondent is victorious on appeal, the loss that it stands to suffer is quantifiable and is subject to monetary recompense by the Applicant.*
- g. That, the Applicant had already deposited with the Respondent a sum of KES 500,000/= on the orders of the Trial Court pending the hearing and determination of the suit and is ready to have the said security continue in place to secure the Respondent's interests pending the hearing and determination of this appeal and is willing to deposit any further or other security for the due performance of the decree and/or enforcement order from the decision of the court dated the 21st day of November, 2025 and/or abide by*

*any other condition set by this Honorable Court for the grant of the orders sought herein*

- h. That, the Applicants are willing to provide such security as the honorable court orders for due performance of such decree or order as may be ultimately binding on them.*
- i. That, no prejudice or difficulty will be suffered by the respondent herein that cannot be compensated by costs if this application is allowed.*
- j. That, the instant Application has been brought in good faith and without undue delay.*
- k. That, it is in the interest of justice that this application be allowed and the Honorable Court has the requisite jurisdiction and discretion to grant the prayers sought thereby.*

3. The Application was supported by the sworn Affidavit dated 2<sup>nd</sup> December 2025 by **Davis Kinyanjui** who regurgitates his arguments in the primary suit subject to the Appeal deponing that;

- a) The Applicant therefore seeks to exercise its constitutionally guaranteed right of appeal with respect to the subject decision of the court in the extant cause.*
- b) The subject appeal is arguable and possesses high chances of success as buttressed in the Applicant's annexed Memorandum of Appeal.*
- c) In order to further the ends of justice and ensure that litigants present their cases and are heard on merits, this Court exercising its Appellate jurisdiction is vested with unfettered discretion to grant orders of injunction restraining the Respondent from*

- disconnecting the Applicant's power supply to its Hotel Waterbuck situate in Nakuru City over the contentious and arbitrary power billing by the Respondent in order to ensure that the sub-stratum of the appeal is protected.*
- d) *There is imminent threat that if the orders sought herein are not granted, the Respondent may move to execute the terms edicts and decision of the Court dated the 21<sup>st</sup> day of November, 2025 and this would effectively render the instant Application and indeed the entire Appeal nugatory and/or moot.*
- e) *Such extreme and highly prejudicial consequences before the hearing and determination of the appeal would subvert the ends of justice and expose the Applicant to Insufferable loss and/or distress.*
- f) *It is in the interest of justice and fairness that the extant Application be certified urgent and the prayers sought in the Application granted.*
- g) *The Court is uniquely burdened with the constitutional mandate to protect and safeguard the Applicant's Constitutional right to be heard that stand threatened if the orders sought herein are not granted.*
- h) *On the strength of the Applicant's promptitude and swiftness in filing the subject Memorandum of Appeal against the impugned decision of the court coupled with the expeditious nature in filing the current Application for injunctive orders it is apparent that the Applicant is ready and willing to prosecute the instant Appeal expeditiously.*

- i) No prejudice stands to be suffered by the Respondent if the orders sought herein are not granted. To the contrary the Applicant will be greatly prejudiced if this Honorable Court fails to grant the orders of injunction as sought herein as it stands to suffer irreparable loss that cannot be mitigated by costs.*
  - j) If the subject orders are not granted, the Applicant's property stands to be auctioned and sold and it stands to suffer loss of profits and/or business on account of lack of electricity to enable the running of the Applicant hotel.*
  - k) The Applicant had already deposited with the Respondent a sum of KES 500,000 on the orders of the Trial Court pending the hearing and determination of the suit and is ready to have the said security continue in place to secure the Respondent's interests pending the hearing and determination of this appeal and is willing to deposit any further or other security for the due performance of the decree and/or enforcement order from the decision of the court dated the 21<sup>st</sup> day of November, 2025 and/or abide by any other condition set by this Honorable Court for the grant of the orders sought herein.*
4. On this 5<sup>th</sup> December 2025 this Court certified as urgent the Notice of Motion dated 2<sup>nd</sup> December 2025 as urgent warranting its hearing ex-parte with its service being dispensed with in the 1<sup>st</sup> instance;
5. The court further issued a temporary Order of injunction pending hearing and determination of the Application, restraining the Respondent, by itself, its servants, agents and/or assigns from disconnecting power

supply, truncating the main or any supply line, removing the main meter or meters for electricity supply, or removing the main supply line from the supply pole to the Applicant's hotel premises known as Hotel Water Buck in respect of Electricity supply.

6. The Applicant was to serve the Application upon the Respondent within seven (7) and the Respondent was file Response within fourteen (14) days of receipt of service.
7. The Applicant was thereafter to file written submissions not exceeding five (5) pages within the 30 days, while the Respondent was to file written submissions not exceeding five (5) pages within the thirty-five (35) days.
8. Ruling on the Application dated 2<sup>nd</sup> December 2025 shall be on the 12<sup>th</sup> February 2026.
9. The Application is opposed vide Replying Affidavit sworn by **Justus Ododa** dated 10<sup>th</sup> February 2026 whereby he depones that;
  - i. The Application dated 2<sup>nd</sup> December 2025 is frivolous, scandalous, fatally defective, an abuse of the court process and is only meant to embarrass this court's time.
  - ii. The Applicant filed a suit against the Respondent to wit NAKURU CMCC NO. 10 OF 2020. Subsequently, the Respondent judiciously defended the suit through its Advocates in the lower court where a judgment was delivered on 21/11/2025 dismissing the Applicant's suit

- iii. When he finally thought the matter had now been fully determined, the Applicant has now proceeded to file an appeal and the instant application to delay and further prejudice the Respondent's legitimate expectation.
  - iv. The Applicant has not shown any willingness to offer security for costs.
  - v. Contrary to the Applicant's averments, the Respondent stands to suffer immense loss due to the Applicant's non-compliance.
  - vi. The Applicant's averments in the supporting affidavit fails to adequately demonstrate the likelihood of success of the appeal.
  - vii. The Applicant has not demonstrated what irreparable loss and the prejudice it stands to suffer, should the application be declined.
10. None of the Parties complied or file written submissions as directed leaving the court to consider the Application against the pleadings filed.

### **Analysis and Determination**

11. Having considered the case for and against, I refine the following two issues for determination:
- a) ***Whether the threshold for grant an injunction or Order of stay of execution pending appeal has been satisfied?***
  - b) ***Whether the appeal raises an arguable issue?***

12. With regards to the 1<sup>st</sup> issue as to whether the threshold for grant an injunction or Order of stay of execution pending appeal has been met? The principles governing the grant of stay of execution pending appeal are well settled under **Order 42 Rule 6(2)** of the Civil Procedure Rules. An applicant must satisfy the Court that:

(a) **Substantial loss may result unless the order is made;**

(b) **The application has been made without unreasonable delay;**

(c) **Security for the due performance of the decree has been given.**

13. The Appeal was filed timeously.

14. In the **Kenya Shell Ltd v Kibiru & Another [1986] KLR 410 [1986] KECA 94 (KLR)** the Court of Appeal held;

*“Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”*

15. The court is alive to the impugned Judgment dismissing the Appellants case in the lower court, and the same is in essence a negative order incapable of being stayed. However, the Appellant is at the risk of being disconnected from electricity supply on the basis of a contested back billing of Kshs 4,061, 531.54 which would expose the Appellant hotel business to further business related lose.

16. The provision of security is a mandatory requirement under **Order 42 Rule 6(2)(b)** as was articulated in **Arun C. Sharma v Ashana**

**Raikundalia t/a Raikundalia & Co. Advocates [2014] eKLR**, with the Court holding that:

***“The security needed under Order 42 guarantees the due performance of such decree or order as may ultimately be binding on the Applicant”.***

17. Applicants have stated without proof of having deposited a sum of Kshs 500,000/- in the lower court which sum they would wish serves as security while expressing a general willingness to comply with any conditions the Court may impose. They have not made any concrete offer of security.
18. The back-billed amount demanded as pending bill for electricity consumed is kshs 4,061, 531.54, the same is for the period dating back to 1<sup>st</sup> August 2006 almost twenty (20) years ago and if the Appeal fails then it is just and fair, that the Respondent recovers the same without ‘much ado’, the current offer of security made by the Applicant is insufficient to satisfy the decree.
19. The requirement is not merely procedural but goes to the heart of judicial discretion under **Order 42 Rule 6(2)(b)** of the Civil Procedure Rules.
20. With regards to the 2<sup>nd</sup> issue as to whether the appeal raises an arguable issue? The Appellant contends that the 50% back-billing substratum its suit was premised on meter-tampering, that the Respondent failed to prove. This raises a legal issue on the legality of the of the back-billing and thus puncturing validity of the impugned judgment.

21. Notwithstanding the failure to strictly meet the requirements for stay of execution, the Court is alive and mindful that it retains an equitable discretion to grant stay or any appropriate relief where justice so demands. The guiding principle is to strike a balance between the successful party's right to enjoy the fruits of judgment and the appellant's right to pursue an appeal without undue hardship.

22. In **Butt v Rent Restriction Tribunal [1982] KLR 417**, the Court of Appeal held:

***“The Court has unfettered discretion to grant a stay of execution. The general principle is that a successful litigant is entitled to the fruits of judgment, but the Court may grant a stay for sufficient cause.”***

23. Accordingly, this court has considered whether the appeal is arguable. The applicable standard is whether the appeal raises at least one bona fide ground worthy of judicial consideration. This principle was affirmed in **Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 Others [2013] eKLR**:

***“An arguable appeal is not one which must necessarily succeed, but one which ought to be argued fully before the court; one which is not frivolous.”***

24. The Applicant has an Arguable Appeal and should electricity supply Applicant's hotel premises known as Hotel Water Buck in respect of Account Number 0533105-01 be disconnected then the entire Appeal shall be rendered nugatory as the Appellants will be straight-jacketed

into paying the entire contested electricity bill before the Respondent reconnects the electricity supply.

### **Disposition**

25. In light of the foregoing, the Court is satisfied that the appeal raises an arguable issue, and that although the Appellant has not demonstrated substantial loss or offered security, the interests of justice require that the appeal be preserved. A conditional Order of Stay against execution of Judgment/ Decree is appropriate under the circumstances.

26. Accordingly, the Court makes the following orders:

- i. An Order of injunction, restraining the Respondent, whether by itself, its servants, agents and/or assigns from disconnecting power-supply, truncating the main or any supply-line, removing the main meter or meters for electricity-supply, or removing the main supply-line from the supply-pole in the Applicant's hotel premises known as Hotel Water Buck in respect of The Contested back-billed sum of kshs. 4, 061, 531.54 relating Electricity supply Account Number 0533105-01, pending the hearing and determination of the appeal;**
- ii. The Appellant shall continue paying All current monthly bills for electricity supply consumed in the Applicant's hotel premises known as Hotel Water Buck relating Electricity supply Account Number 0533105-01:**

- iii. **The Appellants shall deposit the entire sum of kshs 4, 061, 531.54 into court within the next thirty (30) days, as security for due performance of the decree;**
- iv. **In default of compliance with Order (iii) above, the injunction granted herein shall automatically lapse without any other or further reference to the Court;**
- v. **Costs of this application shall abide the outcome of the appeal;**
- vi. **The Applicant is directed to set down the interlocutory Appeal for admission and directions on hearing and disposal within the next sixty (60) Days;**
- vii. **This matter shall be mentioned before the Deputy Registrar on 26<sup>th</sup> June 2026 to confirm the filing of the record of appeal**

It is So Ordered

**Dated signed and delivered at Nakuru**

**On this 26<sup>th</sup> day of March 2026**



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**Mohochi S.M.**

**JUDGE**