



REPUBLIC OF KENYA



KENYA LAW
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**Waitiki v Kenya Power & Lighting Company Ltd (Environment and Land Case
Civil Suit 87 of 2012) [2026] KEELC 2265 (KLR) (23 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2265 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE CIVIL SUIT 87 OF 2012**

**JO OLOLA, J
APRIL 23, 2026**

BETWEEN

EVANSON JIDRAPH KAMAU WAITIKI PLAINTIFF

AND

KENYA POWER & LIGHTING COMPANY LTD DEFENDANT

RULING

1. By a Notice of Motion dated 23rd July, 2025, Evanson Jidraph Kamau Waitiki (Plaintiff/Applicant) prays for the following orders:
 1. Spent;
 2. That this Honourable Court be pleased to discharge the orders of stay of execution of the decree herein pending appeal made on 12th October 2023;
 3. That this Honourable Court be pleased to order that all the amounts deposited as security in the joint account Number 0XXXXXXXXXX00; Munyithya, Mutugi, Umara & Muzna Company Advocates and Gacheru Ng'ang'a & Company Advocates, Standard Chartered Bank, Maritime Branch be released to the Plaintiff/Decree-Holder; and
 4. That costs of this Application/Reference be provided for.
2. The application is supported by an Affidavit sworn by the Applicant and is premised on the grounds that:
 - a. On 12th October 2023, this Court granted an order of stay pending appeal on condition that the Defendant do deposit a security of Kshs 5,500,000/= in a joint account in the names of both advocates;



- b. The said stay was predicated on an intended appeal to the Court of Appeal as expressed in the Notice of Appeal dated 14th October, 2022;
 - c. On 23rd May 2025, the Court of Appeal deemed the said Notice of Appeal as withdrawn in Mombasa Court of Appeal Civil Application No. E107 of 2023;
 - d. The effect of the Ruling is that there is no appeal in the Court of Appeal and the said stay has thus lapsed by operation of the law;
 - e. This matter has been pending in Court for the last 13 years and it is only fair and just that the Applicant who is elderly be allowed to enjoy the fruits of his judgment; and
 - f. There is therefore nothing in place to prevent the execution of the decree of this Court made on 12th October, 2022.
3. The Kenya Power & Lighting Company Limited (the Defendant/Respondent) is opposed to the application. In a Replying Affidavit sworn on its behalf by its Legal Officer Justus Ododa on 31st July 2025, the Respondent avers that on 30th May 2025, it did file in the Court of Appeal an application seeking to recall, review and set aside the Ruling of 23rd May 2025. The Respondent avers that executing the decree at this stage would prejudice the Respond's right to a fair hearing.
 4. The Respondent further avers that the Applicant is adequately protected by the security deposit of Kshs. 5,500,000/= which continues to accrue interest in a joint account. The Respondent asserts that the Applicant's claim that the Deputy Registrar's refusal to re-issue warrants is done in ignorance is erroneous as it ignores the Respondent's active steps to preserve its appeal.
 5. The Respondent further avers that on 10th June 2025, the Court of Appeal issued directions and the requirements to file submissions thereby indicating an imminent hearing of the review application.
 6. I have carefully perused and considered both the application as well as the response thereto. I have similarly perused and considered the submissions and authorities placed before the Court by the Learned Advocates representing the parties.
 7. By this application before the Court, the Plaintiff prays for an order that the Court be pleased to discharge the orders of stay of execution of the decree herein pending appeal as issued on 12th October 2023. In addition, the Plaintiff has urged the Court to release the sum of Kshs. 5,500,000/= that was deposited as security in the joint account operated by the Learned Advocates representing the parties herein.
 8. According to the Plaintiff, the Defendant no longer has an Appeal pending before the Court of Appeal and the stay issued herein has lapsed by operation of the law.
 9. That view is faulted by the Defendant which asserts that the assertion that no Appeal is pending is factually incorrect. According to the Defendant, the Plaintiff's contention that the orders of stay of execution have lapsed is premised on a Ruling delivered by the Court of Appeal on 23rd May 2025 in Civil Application No. E107 of 2023 which Ruling deemed the Defendant's Notice of Appeal as withdrawn under Rule 85 (1) of the Court of Appeal Rules, 2022. It is the Defendant's case that they have filed an application for review of the said application which they are actively pursuing and that to execute the decree at this stage would prejudice their right to a fair hearing.
 10. As it were, there was no dispute that on 12th October 2023, the Honorable Justice L. Naikuni granted a conditional stay of execution of the judgment herein delivered on 12th October 2022. Delivering a



Ruling arising from a Notice of Motion dated 17th May 2023, the Learned Judge granted orders as follows:

- a. That the Notice of Motion application dated 17th May, 2023 be and is hereby found to have merit and hence allowed only for the purpose of preserving the suit property;
- b. That stay of execution of the Judgment/Decree herein be and is granted pending hearing and determination of the Applicant's intended appeal before the Court of Appeal;
- c. That an order be and is hereby made for the Defendant/ Applicant to deposit security of a sum of Kenya Shillings Five Million Five Hundred Thousand (Kshs 5,500,000/=) in a fixed Joint Escrow Interest earning Bank Account, in a reputable commercial bank in the names of Messers Munyithya, Mutugi, Umara & Muzna Advocates and Gacheru & Company Advocates both being the Counsel for the parties within the next (21) days from the date of delivery of this ruling. In default, the stay orders shall automatically lapse; and
- d. That there shall be no orders as to costs.

11. It was further not in dispute that as at the time the orders of stay were granted, the Defendant had only filed the Notice of Appeal which was annexed to the Supporting Affidavit to their application dated 14th October 2022.

12. It was also apparent that after lodging the Notice of Appeal, the Defendant did not take any steps to lodge a Record of Appeal before the Court of Appeal as required under Rule 82 (1) and (2) of the Court of Appeal Rules. Taking advantage of that situation, the Plaintiff herein instituted a Notice of Motion dated 30th November 2023 before the Court of Appeal. In a Ruling rendered on the said application on 23rd May 2025, the Court of Appeal delivered itself as follows at Paragraphs 8 and 9 thereof:

“.. ... it is clear that more than two years have passed since the Respondent gave notice of the intended appeal. Yet, the record as put to us does not contain any correspondence to demonstrate diligence on the part of the respondent to pursue its application for certified copies of the proceedings.

“In view of the foregoing, we form the view that this is a proper case for exercise of the Court's discretion pursuant to Rule 85 (1) which reads:

1. If a party who has lodged a notice of appeal fails to institute an appeal within the appointed time, that party shall be deemed to have withdrawn the notice of appeal and the Court may, on its own motion or on application by any other party, make such order.”

13. Accordingly, the Court of Appeal proceeded to issue orders that the Respondent's Notice of Appeal dated 14th October 2022 be and is hereby deemed as having been withdrawn by dint of Rule 85 (1) of the Court of Appeal Rules, 2022.

14. Flowing from the foregoing, the Notice of Appeal having been withdrawn as such, it was clear to me that the Defendant herein has no valid Appeal pending for hearing and determination by the Court of Appeal. That being the case, the order of stay of execution cannot continue to be in force as it was conditional and subject to the intended appeal. The stay orders had been granted on the basis of the Notice of Appeal dated 14th October 2022 as, under Order 42 Rule 7 of the Civil Procedure Rules, an appeal is deemed to have been filed once the Notice of Appeal is given.



15. Considering a similar matter in Al Yusra Restaurant Limited –vs- Kenya Conference of Catholic Bishops & Another (Petition E317 of 2014) [2025] KEHC (15 May 2025) (Ruling), the Court stated as follows:

“The law is clear that a stay of execution pending appeal is not indefinite or in vacuo – it is granted in contemplation of a diligently prosecuted appeal. Where the foundation for the stay (the appeal) falls away, the stay cannot continue to subsist. In the present case, the High Court’s stay order of 28th February 2022 was explicitly “pending the hearing of the intended appeal.” It was therefore conditional on the Applicant actually lodging and pursuing that appeal within a reasonable time. Once the appeal was not perfected in time and the Notice of Appeal was deemed withdrawn by order of the Court of Appeal, there remained no “intended appeal” that was actively pending.

16. Arising from the foregoing, it was evident to me that the Appeal was no longer in place and that the order of stay of execution had automatically lapsed once the Notice of Appeal was withdrawn by the Court of Appeal.

17. In the premises, I hereby allow the Notice of Motion dated 23rd July 2025 in terms of prayer Nos. 2 and 3 thereof with costs.

18. It is so ordered.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 23RD DAY OF APRIL, 2026.

.....

J.O. OLOLA

JUDGE

In the presence of:

Ms. Firdaus Court Assistant.

Mr. Gacheru Advocate for the Plaintiff/ Applicant

Mr. Mkomba holding brief for Munyithia Advocate for the Defendant/ Respondent

