



**Nyakwara v Kingori (Environment & Land Case 289 of 2016)  
[2024] KEELC 179 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 179 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 289 OF 2016  
A OMBWAYO, J  
JANUARY 25, 2024**

**BETWEEN**

**JARED OMWOYO NYAKWARA ..... PLAINTIFF**

**AND**

**ALICE KINGORI ..... DEFENDANT**

**RULING**

1. By application dated 16<sup>th</sup> November 2023, the judgment debtor, Jared Omwoyo Nyakwara has come to this court praying for stay of execution pending appeal against the judgment entered on 29<sup>th</sup> June 2023. The application is grounded on the facts that Judgment was delivered in favor of the decree holder against the judgment debtor on the 29<sup>th</sup> June 2023. The judgment debtor being dissatisfied with the judgment delivered on the 29<sup>th</sup> June 2023, desires to appeal against the whole judgment. In pursuance thereof, the judgment debtor has lodged a notice of appeal.
2. According to the judgment debtor, the intended appeal has a high probability of success and the decree holder is entitled to seek execution of the decree in terms of the judgment passed on 29<sup>th</sup> June 2023, which execution will have the effect of rendering the intended appeals nugatory.
3. Substantial loss will be occasioned to the judgment debtor if the decree holder is allowed to execute the judgment passed on the 29<sup>th</sup> June 2023.
4. The judgment debtor is ready to furnish security for the due performance of the Decree emanating from the judgment.
5. In the supporting affidavit the judgment debtor states that the decree holder will execute the decree and will seek that the rent deposited in court to be released to the decree holder.
6. The decree holder has filed and earlier application dated 1st November 2023 seeking that the funds to be released to her.



7. The judgment debtor has opposed the application for release of funds. On the 23<sup>rd</sup> November 2023, this court ordered that the applications be heard simultaneously.
8. I have considered both applications. I do find that the relevant provision in law for stay of execution pending appeal is order 42 rule 6 (1) that provides: -

“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.
9. In this case, I do find that the appeal was filed timeously and without inordinate delay.
  10. As to what substantial loss is, it was observed in *James Wangalwa & another v Agnes Naliaka Cheseto* [2012] eKLR, that:

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal ... 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 loss would render the appeal nugatory.”

11. On the issue as to whether the appellant/ judgment debtor will suffer substantial loss if stay is not granted, I do find that the rent being deposited in court if paid to the decree holder will amount to substantial loss if the plaintiff succeeds on appeal.
12. The upshot of the above is that I do grant stay of execution pending appeal on condition that Metrocasino Ltd continue collecting rent from parcel of land Nakuru/Municipality Block15/103 and continue depositing rent in court until the hearing and determination of the appeal. Costs of the application be in the appeal. This order determines both applications.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 25<sup>TH</sup> DAY OF JANUARY 2024.**

**A O OMBWAYO**

**JUDGE**

