



**Mugambi v Galaxy Merchants Ltd (Civil Application
E029 of 2024) [2024] KECA 713 (KLR) (21 June 2024) (Ruling)**

Neutral citation: [2024] KECA 713 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E029 OF 2024
W KARANJA, LK KIMARU & AO MUCHELULE, JJA
JUNE 21, 2024**

BETWEEN

KENNETH MUTEMBEI MUGAMBI APPLICANT

AND

GALAXY MERCHANTS LTD RESPONDENT

(Being an application for stay of execution against the judgment of the High Court at Meru (E. M. Muriithi, J.) dated 28th February 2024) in HCCA No. E042 of 2022)

RULING

1. The background of this application dated 25th March 2024 under Rule 5(2)(b) of the [Court of Appeal Rules, 2022](#) is as follows. The applicant, Kenneth Mutembei Mugambi, was sued by the respondent, Galaxy Merchants Limited, for goods that were ordered and delivered to him and for which he did not pay. The Chief Magistrates Court in Meru CMCC No 40 of 2014 delivered a judgment on 8th February 2017 for the respondent, together with costs. The applicant preferred an appeal to the High Court at Meru. The appeal was heard and dismissed on 30th July 2018. The respondent begun the process of execution, by seeking the applicant's committal to civil jail.
2. The applicant on 18th January 2022 applied to the trial court to have the execution of the judgment dated 8th February 2017 stayed, saying that he had been declared to be insolvent. The trial court dismissed the application on 2nd March 2022. The applicant applied to the High Court which dismissed the application on 29th February 2024. He was aggrieved and filed a notice of appeal dated 4th March 2024.
3. What is before us is the application that seeks the following orders:-



- 2) That the Honourable Court be pleased to order for a stay of execution of the Trial Court’s decree after the dismissal of my appeal in Case E042 of 2022 Meru High Court pending the determination of my already launched appeal.
- 3) That the Honourable Court be pleased to order that the status quo established in Meru High Court Case No E042 of 2022 as regards performance security be maintained.”
4. The present position is that the applicant is serving civil jail of six (6) months in execution of the decree. The decretal sum is now in excess of Kshs.4.4 million.
5. The respondent opposes the application stating that the applicant’s appeal was not arguable as he had obtained goods for which he had not paid, and that both the trial court and the High Court had found against him. Secondly, that the applicant had lodged proceedings to be admitted under No Asset Procedure under Section 360(2) of the *Insolvency Act* from which he was discharged automatically after the lapse of 12 months. When the applicant sought to stop the execution of the decree the trial court declined. He went to the High Court on appeal which was dismissed. It was submitted on behalf of the respondent that the appeal was not arguable as the provisions of section 360(2) of the *Insolvency Act* were clear and unambiguous, that after the 12 months the applicant became liable to pay the decree. The respondent further deponed that it is capable of reimbursing the decretal sum in the event that the appeal is successful, and therefore the appeal shall not be rendered nugatory.
6. Prayer 2 is couched in such a way that we are being asked to stay the decree of the trial court. Unfortunately, we do not have the jurisdiction to grant such a prayer. We can only deal with a prayer seeking the stay of decree from the judgment of the High Court, since a party aggrieved by the judgment would appeal to this Court.
7. Whether or not to stay such a decree, after a notice of appeal has been lodged, this Court will be exercising discretionary power guided by the demonstration that the appeal is arguable and that, if stay is not granted, and the appeal were to succeed, such an appeal would be rendered nugatory. (See *Stanley Kangethe Kinyanjui v Tony Ketter & 5 others* [2013]eKLR).
8. We consider that the High Court dismissed the applicant’s appeal with costs. There was no order capable of stay that was granted by the court. Such a decree is incapable of stay. (See *Western College of Arts and Applied Sciences v Oranga & others* [1978] KLR 63).
9. We were not specifically asked to stay the civil jail or order the release of the applicant. The application asked for –

“stay of execution of the decree ordered by the trial court.....”

10. The result is that we dismiss the application with costs.

DATED AND DELIVERED AT NYERI THIS 21ST DAY OF JUNE 2024.

W. KARANJA

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JUDGE OF APPEAL

L. KIMARU

.....

JUDGE OF APPEAL



A.O. MUCHELULE

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

