



Amza Limited v Mwangi & 2 others (Environment & Land Case 50 of 2021) [2024] KEELC 1758 (KLR) (11 April 2024) (Ruling)

Neutral citation: [2024] KEELC 1758 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 50 OF 2021**

**A OMBWAYO, J
APRIL 11, 2024**

BETWEEN

AMZA LIMITED PLAINTIFF

AND

DANIEL WAI THANJI MWANGI 1ST DEFENDANT

EQUITY BANK (KENYA) LIMITED 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

RULING

1. Daniel Waithanji Mwangi hereinafter referred to as the applicant has come to court with a Notice of Motion dated 15th February 2024 praying for an order that this court grants stay of execution of the judgment delivered on the 14th December 2023 and all consequential orders pending the hearing and determination of appeal against the whole of the said judgment. The application is based on grounds that the judgment was delivered in favour of the plaintiff on the 14th December 2023.
2. The 1st defendant being dissatisfied with the judgment desires to appeal against the whole judgment in the court of appeal and has already filed an appeal. Civil Appeal No. E015 of 2024. The intended appeal has a high probability of success. The 1st defendant is entitled in law to seek a stay of execution of the decree in terms of the judgment delivered on 14th December 2023 which execution will have the effect of rendering the intended appeal nugatory.
3. According to the applicant, substantial loss will be occasioned to the 1st defendant who has constructed a four storeyed building on the suit premises. That the applicant is ready to furnish security for the due performance of the decree emanating from the judgment. The application is supported by the affidavit of the applicant that reiterates the grounds of the application and adds that the applicant is likely to suffer substantial loss if the judgment is executed.



4. In the replying affidavit, Owino Opiyo the advocate for plaintiff/ respondent /Decree holder states that this court is *functus officio* and not capable of granting the orders sought by the applicant/ Moreover, that the applicant has failed to give security or value of the same. He states that the applicant has not demonstrated that he will suffer substantial loss and that the appeal shall be rendered nugatory if stay is not granted.
5. I have considered the application, replying affidavit and rival submission and do find that the relevant law is Order 42 Rule (6) (1) and (2) of the [Civil Procedure Rules](#) 2010. The said provides that: -
 6. Stay in case of appeal [Order 42, rule 6] (1)

No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
 - (2) 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.
6. The judgment was made on 14th December 2023 and the application was filed on 16th February 2024. Considering that the dates fall very close to vacation I do find that there was no inordinate delay.
7. On substantial loss, I do find that the applicant has demonstrated that he will suffer substantial loss if he removes the buildings and structures on the suit property and later succeeds on appeal.
8. I do find that it is only fair to grant a stay of execution pending appeal in case the Court of Appeal reaches a decision different from mine.
9. I do grant a stay of execution pending appeal on condition that the applicant deposits in court security of the value of Ksh 2,000,000 in court, or cash of Kshs 1,000,000 as security for costs and execution of decree.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 11TH DAY OF APRIL 2024.

A. O. OMBWAYO

JUDGE

