



**Sana Industries Limited v Aibu (Employment and Labour Relations
Appeal E103, E104, E107, E106, E133, E132 & E131 of 2025
(Consolidated)) [2025] KEELRC 2329 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2329 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E103,
E104, E107, E106, E133, E132 & E131 OF 2025 (CONSOLIDATED)**

JW KELI, J

JULY 30, 2025

BETWEEN

SANA INDUSTRIES LIMITED APPELLANT

AND

ANDREW WEKESA AIBU RESPONDENT

RULING

1. The Appellant filed an application by way of Notice of Motion dated 11th April 2025 brought under Order 40 Rule 6, Order 50 Rule 3 and 6 and Sections 1A, and 3A of the *Civil Procedure Act* Cap 21 Laws of Kenya, and all other enabling provisions of the law for Orders: -
 1. Spent
 2. Spent
 3. That this Honourable Court be pleased to stay the execution of the Judgement and Decree of this Honourable court issued on 18th day of March 2025 pending the hearing and determination of this Application.
 4. That this Honourable Court be pleased to stay the execution of the Judgement and Decree of this Honourable court issued on 18th March 2025 pending the hearing and determination of this Appeal.
 5. That this Honourable be pleased to grant an Order for stay of all proceedings in the trial Court, pending the hearing and determination of the appeal.
 6. That this Honourable court be pleased to admit the original logbook of Motor Vehicle Registration number KCC xxxH valued at Kshs. 1,800,000/- as security.



7. That the Application be heard inter partes on such date and time as this Honourable Court may direct.
8. That The costs of this Application abide the outcome of the Appeal.

Grounds of the application

2. That judgement in the subordinate court matter was delivered on 18th March 2025 wherein the respondent herein was awarded Kshs 418,080.
3. That immediately thereafter the Applicant/Appellant through their advocates sought for 30 days stay of execution of the Judgment and leave to appeal the said decision.
4. That the prayer for stay of execution and leave was granted.
5. That the duration given for stay of execution and leave to appeal granted is set to expire on 18th April 2025.
6. That the Applicant/Intended Appellant is dissatisfied and aggrieved by the said Judgment and has opted to Appeal the said the entire judgment.
7. That the Applicant's/Intended Appellant's intended Appeal raises pertinent issues and has a high chance of success.
8. That unless the interim orders are granted, the Applicant will suffer irreparable damage hence it is in the best interest of justice that the application be certified urgent and orders granted as prayed.
9. That this Application will not occasion any prejudice to the Respondent. 10. That this Application has been done without any unreasonable delay.
10. That It is therefore in the interest of Justice that this Application is considered urgently and the reliefs sought granted.
11. That the applicant has met the minimum conditions for grant of stay pending appeal, by bringing the application timeously and offering security for the decretal sum.
12. The application was supported by the Affidavit of Agnes Kagwiria dated 11th April 2025, where she annexed the default judgment of the lower court dated 18th March 2025; a copy of the filed memorandum of appeal [KG-2], a copy of the valuation report, and a copy of the log book for Motor Vehicle Reg. No. KBN xxxA [KG-3].

Response

13. The application as opposed by the respondent/Decree Holder who filed a replying affidavit dated 9th May 2025 stating as follows:-
 - a. That I have read and understood the Notice of Motion dated 11th April 2025 together with the Supporting Affidavit thereof and I wish to respond as hereunder.
 - b. That judgment in Ruiru MCELRC No. E124 of 2024 was delivered in my favour on 18th March 2025 and I was awarded a total sum of Kshs. 418,080 plus half costs and interest.
 - c. That the Appellant's Application herein lacks merits and is only meant to delay justice and deny me the fruits of my judgment.



- d. That I am informed by my advocates on record Ms. Kangethe Waitere & Co. Advocates which information I verily believe to be true that the Appellant has not met the conditions for grant of Stay of Execution pending Appeal as the Appeal has no chances of success.
 - e. That the proposed security by the Appellant of a motor vehicle is not a security after all since the said motor vehicle will remain in the use and control of the Appellant and in the very likely event that the appeal is dismissed I will still be forced to pursue execution against the Appellant and as such the motor vehicle would not serve the purpose of security for the decree which is a money decree.
 - f. That I pray that in the event that the court is inclined to allow the application for Stay of Execution, that the Appellant be ordered to deposit the full Decretal Sum and Costs in the total sum of Kshs. 463,079 as per the Decree in a joint interest earning bank account to be held by advocates for both parties within 30 days. Annexed and marked "AWA 1" is a copy of the Decree.
14. The applicant filed a further affidavit in reply and stated inter alia, that the security offered was almost double the value of the decretal sum, the respondent had not filed an affidavit of means, the applicant's business was capital intensive, hence the alternative security.
 15. The court directed the application be canvassed by way of written submissions and both parties filed.

Decision

Whether the application for stay pending appeal was merited.

16. The *Employment and Labour Relations Court [Procedure] Rules* 2024 on stay of execution pending appeal states at Rule 21: -
 - "1. Where an application for stay of execution pending appeal has been lodged,
 - [1] the applicant shall, in the supporting affidavit, declare whether a similar application has been filed in any other court.
 - [2] An application for stay of execution pending appeal shall be filed in the appeal file."
17. Rule 73 of the *Employment and Labour Relations Court [Procedure] Rules* 2024 provides for application of the *Civil Procedure Rules* on application for stay of execution as follows:-
 - "73 Rules on execution or stay of execution of an order or decree of the Court shall
 - [2] be in accordance with the *Civil Procedure Rules*"
18. Order 42 Rule 6 [1 and 2] of the *Civil Procedure Rules* provides for conditions for grant of Order of stay of execution as follows-
 - "[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.”

19. The parties relied on several authorities which the court noted were consistent with the decision in *Butt v Rent Restriction Tribunal* [1982] KLR 417 where the Court of Appeal [Madan J.A] gave guidance on how a Court should exercise discretion in an application for a stay of execution, that: -

“If there is no other overwhelming hindrance, a stay ought to be granted so that an appeal, if successful, may not be nugatory. A stay which would otherwise be granted ought not to be refused because the judge considers that another, which in his opinion will be a better remedy, will become available to the applicant at the conclusion of the proceedings.

It is in the discretion of the court to grant or refuse a stay but what has to be judged in every case is whether there are or not particular circumstances in the case to make an order staying execution. It has been said that the court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal, if successful from being nugatory, per Brett, LJ in *Wilson v Church* [No 2] 12 Ch D [1879] 454 at p 459. In the same case, Cotton LJ said at p 458:

“I will state my opinion that when a party is appealing, exercising his undoubted right of appeal, this court ought to see that the appeal, if successful, is not nugatory.”

20. It is trite in application for stay of execution the court is to be satisfied on the three conditions under Order 42 [6] namely:-

“[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.”

21. The application was filed on 15th April 2025. The impugned judgment was delivered on the 18th March 2025 hence no issue of unreasonable delay. On the condition of establishment of substantial loss, the applicant submitted that they were unlikely to recover the money from the decree holder in the event of a successful appeal. The respondent filed replying affidavit dated 9th May 2025 but did not address his financial means and capability to refund decretal sum. It is now settled law that the Court must address its collective mind to the question of whether to refuse an application for stay would occasion substantial loss to the Respondent and in turn, render the appeal nugatory. In determining



what amounts to substantial loss, the Court of Appeal in the case of *Antoine Ndiaye v. African Virtual University* [2015] eKLR, observed as follows:

“...Substantial loss does not represent any particular mathematical formula. Rather, it is a qualitative concept. It refers to any loss, great or small, that is of real worth or value as distinguished from a loss without value or a loss that is merely nominal. ...the Applicant must show he will be totally ruined in relation to the appeal if he pays over the decretal sum to the Respondent. In other words, he will be reduced to a mere explorer in the judicial process if he does what the decree commands him to do without any prospects of recovering his money should the appeal succeed. Therefore, in a money decree, like is the case here, substantial loss lies in the inability of the Respondent to refund the decretal sum should the appeal succeed. It matters not the amount involved as long as the Respondent cannot pay back”

The court finds that for failure to demonstrate ability to refund the money in the event the appeal is successful, there was a potential substantial loss to the appellant/applicant demonstrated.

22. The last factor under Order 42 Rule [6] is security for the performance of judgment. The applicant stated it was ready to give security in the form of a Motor Vehicle logbook of KBN xxxA Isuzu mini truck, and attached a valuation report and a copy of the log book [KG-3]. The valuation was of Kshs. 700000 and the decretal sum of Kshs. 418080.
23. The respondent was opposed to the offer of log book as security stating the same was not adequate security. The respondent contended that the vehicle was in use and in the control of the applicant, and being a movable property, was prone to depreciation. The respondent submitted that the security should be such that in the event of the appeal being unsuccessful, he should get his money without difficulties and relied on the decision in *Matata & another v Rono and another* [2024]eKLR .
24. The condition of security as per Order 46[2] b] is-

“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.”

The court finds that the applicant has demonstrated the security offered is sufficient by the production of a valuation report. There is no doubt as to the ownership of the motor vehicle being registered as Sana Industries Company Limited. The Motor Vehicle not encumbered by loans and no previous owners. I am satisfied it is a good security and uphold the decision in *Ojwang v Kabiu & 2 others* [2024] eKLR where the court allowed the Motor Vehicle security noting the respondent would not suffer prejudice. I further uphold my recent decision in Nairobi ELRC Appeal No. E105 of 2020 *Sana Industries Ltd v Beth Waruga Macharia* delivered on the 4th July 2030.

Conclusion

25. In conclusion, the application dated 16th June 2025 is allowed as follows:-
 - a. That this Honourable Court is pleased to grant the applicant a temporary order of stay of the execution of the Judgement and Decree of the Magistrates Court delivered on 18th March 2025 by Hon Diana Orago pending the hearing and determination of this Appeal.
 - b. That this Honourable court is pleased to admit the original logbooks of Motor Vehicle Registration numbers KBN xxxA , KCG xxxN and KCB xxxG as security in E103, E104, E107,



E106, E133, E132, and E131 to be deposited in court within 15 days of this order in default execution may proceed.

c. Cost of the application to the Respondent in the cause.

26. The appeal to be fast-tracked to protect the interest of the respondent. The court directs the appellant to file and serve in 21 days written submissions in all the appeals. The respondent to file and serve submissions in 21 days of being served or after lapse of the 21 days. Mention on the 22nd September 2025 to confirm compliance and for parties to highlight submissions.

27. It is so Ordered.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT NAIROBI THIS 30TH DAY OF JULY 2025.

J.W. KELI,

JUDGE

In the presence of:

Court Assistant: Otieno

Applicant – Thuo h/b Eredi

Respondent: Kangethe

