



REPUBLIC OF KENYA



KENYA LAW
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**Villa Sandra Company Limited v Matete (Employment and Labour Relations
Appeal E115 of 2024) [2025] KEELRC 2328 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2328 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E115 OF 2024**

**JW KELI, J
JULY 30, 2025**

BETWEEN

VILLA SANDRA COMPANY LIMITED APPELLANT

AND

MUTUNGA MATETE RESPONDENT

RULING

1. The applicant was dissatisfied with the judgment of the court dated 14th March 2025. The applicant filed Notice of Motion dated 14th April 2025 Under Rule 42 Rule 6, & Order 51 Rule 1 of the Civil Procedure Rules, 2010, Sections 3A & 63E of the [Civil Procedure Act](#) and All Other Enabling Provisions of the Law seeking for the following orders-
 1. Spent
 2. That this Honourable Court be pleased to grant an order of stay of execution of the judgment and the decree therein pending the hearing and determination of this application.
 3. That this Honourable Court be pleased to grant an order of stay of execution of the judgment and the decree therein pending the hearing and determination of Appeal lodged at the Court of Appeal at Nairobi being CIVIL APPEAL No. E283 of 2025 (Villa Sandra Company Ltd Vs Mutunga Matete)
 4. That the cost of this application be in the cause.

Grounds of the application

2. That on 14th March, 2025 the Court delivered judgment and dismissed the Appellant's appeal with costs to the Respondent.



3. The Court granted the Appellant 30 days stay of execution which orders lapse today 14th April, 2025 and therefore from tomorrow 15th April, 2025 there will be no order of stay of execution and the Respondent will start the process of execution anytime.
4. That Appellant being aggrieved with the judgment of the Court delivered on 14th March, 2025 has lodged an Appeal at the Court of Appeal at Nairobi being CIVIL APPEAL No. E283 of 2025 (Villa Sandra Company Limited Vs Mutunga Matete). That the Appellant is apprehensive that since there will be no order of stay of execution at 15th April, 2025 the Respondent may execute the judgment thus rendering the appeal at The Court of Appeal nugatory unless this Honourable Court grants an order of stay of execution.
5. The application was supported by affidavit of Esther Kwamboka sworn on the 14th April 2025 in which she confirmed that the decretal sum had, since the filing of the application, been deposited in a joint account between the advocates for the parties on record.
6. The application was opposed by the respondent vide the filed grounds of opposition as follows-
 - a. That the instant Application is frivolous, vexatious, unmeritorious and untenable in law and/or lacks in legal basis; the same ought to be dismissed in limine;
 - b. That Decree Holder objects to the said Application as the same offends the principles guiding grants of stay of execution pending appeal which are well provided for pursuant to Order 42 Rule 6 (1), (2) and Rule (4) of the Civil Procedure Rules to the extent that: - a. The Judgement Debtor/Applicant has not demonstrated to the court to what extent they shall suffer substantial loss if the execution proceeds; b. Further the Application has been brought as an afterthought and with intentional delay as the orders for stay that was granted by the court lapsed on the 13th April, 2025 and they never applied for extensions of the same. Thus, the instant Application was motivated and/or informed by the fact that the Decree Holder was about to proceed with the execution of the Decree to recover the decretal amount and costs;
 - i. It is established and from the admission of the Applicant that the stay which was granted by consent of the parties lapsed on the 13th day of April, 2025, they slept on their rights to either engage the Decree Holder on the matter or proceed to extend the said orders of stay.
 - ii. Moreover, the Applicant has not shown any willingness to have half of the decretal amount and costs deposited paid to the Respondent.
 3. THAT further to the aforementioned, it is trite law that stay of execution is granted when the Applicant demonstrates sufficient cause which is contrary to our instant case as the Judgment debtor has failed to demonstrate any sufficient cause to warrant stay of execution of the decree and costs herein. The reasons given by the judgement debtor does not meet any threshold thereof and less to say, the appeal, being ELRCA No. E283 of 2025, has not been shown as to have raised matters of the law with high chances of succeeding, being a second appeal. In any event, the appeal fails, the Decree Holder would have been held hostage in a case in which he has the ultimate rights to enjoy the fruits of his judgement.
- c. That Applicant has always held the Respondent hostage by seeking stay of execution since the trial court rendered its first decision in MCELRC/E633/2022: - MUTUNGA MATETE - vs- VILLA SANDRA COMPANY LIMITED where they were issued with stay of execution



pending hearing and determination of this matter being ELRCA/E115/2024: - Villa Sandra Company Limited VS Mutunga Matete and again they want this court to continue granting them stay where they have not demonstrated that they have an appeal which raises only points of law at the court of appeal. This protracted litigation only denies the Respondent justice and his right to enjoy the fruits of the judgement.

- d. That this instant application is thus an abuse of the court processes and has no substance as the Applicant, through their counsel, refused to avail themselves to execute the documents necessary for the release of the decretal amount and further, they even failed to execute documents to have the amount deposited in joint account on time; only after several follow ups to force them to comply with orders of the trial court. It is the intention of the Applicant to frustrate the Respondent by failing to comply with court orders and denying the Respondent his right to enjoy the fruits of his judgement.
 - e. That in as far as this Application is concerned; the lethargy depicted by the Applicant in pursuing this matter completely disentitles them from asking the court to exercise its discretion in its favour, the averments made in the said Application are not grounded on the law as the appeal filed has not demonstrated matters of law but has dwelt on issues of facts that meets not the threshold for a second appeal.
 - f. That the Application has been filed in bad faith since the Applicant stays informed on the law. The Application therefore amounts to an abuse of the court processes and their sole purpose and intention thereof, is to continue dragging the parties herein to a protracted legal battle in a matter that should have determined had the Applicant paid decretal amount, or better still deposited at least half of the amount to the Respondent so as to make the Respondent enjoy half of the fruits of his judgement.
 - g. That the orders as framed in the said Application, and particularly orders under paragraph 3 of the said application, cannot issue as the Applicant has neither established the threshold to warrant this court exercise its discretion to grant stay pending appeal nor agreed to comply with conditions, should the court grant the same to the effect that half the decretal amount be released to the Respondent. The Decree Holder and the Court cannot be held hostage by the Applicant who has the ultimate intentions of putting the Respondent to a never-ending legal battle but employs the right of appeal as an avenue to cause delays and injustice in this matter. Further, should the court issue such orders and the Applicant fail to succeed in the Appeal, the Decree Holder will be greatly prejudice as he will be subjected to wait in eternity. Therefore, the Application is unnecessary and made to disrupt the course of justice.
 - h. That from the foregoing, therefore, the Application as drawn is not worthy of a grant of the Orders sought therein and deserves to be dismissed with costs, and in any event the court will be inclined to grant the said orders, we ask the court, for the benefit of fairness and justice, that half of entire decretal amount as deposited in joint account be released to the Respondent pending the said appeal; otherwise the said application must be dismissed with cost, as we urge the court.
7. The parties relied on several authorities which the court noted were consistent with the decision in Butt -vs 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."

8. It is trite in application for stay of execution the court is to be satisfied on the three conditions under Order 42 (6) of the Civil Procedure Rules 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.'
9. The applying the foregoing decision (Butt) the court finds that no prejudice would be suffered by the decree holder if the Order of stay is granted as the decretal sum is held in a joint interest account hence the decretal sum is secure. The court is minded that when a party is appealing, exercising his undoubted right of appeal, this court ought to see that the appeal, if successful, is not rendered nugatory (Butt, supra).

Conclusion

10. The application dated 14th April 2025 is allowed. That this Honourable Court is pleased to issue an order of stay of execution of the judgment and the decree therein pending the hearing and determination of Appeal lodged at the Court of Appeal at Nairobi being CIVIL APPEAL No. E283 of 2025 (*Villa Sandra Company Ltd Vs Mutunga Matete*). Cost of the application to the respondent.
11. 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 -Omangwa h/b Ondabu

Respondent -Abiero

