



REPUBLIC OF KENYA



**Sana Industries Limited v Macharia (Employment and Labour Relations
Appeal E105 of 2025) [2025] KEELRC 2035 (KLR) (4 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2035 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS APPEAL E105 OF 2025**

JW KELI, J

JULY 4, 2025

BETWEEN

SANA INDUSTRIES LIMITED APPELLANT

AND

BETH WARUGA MACHARIA 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 KCB 015G valued at Kshs. 1,300,000/- 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 421,502.00.
3. That immediately thereafter the Applicant/Appellant through their advocates sought for 30 days stay of execution of the Judgement 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 the applicant is ready to provide security for this appeal being a Motor Vehicle of registration no. KCB 015G valued at Kshs. One Million Three Hundred Thousand.
9. 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.
10. That this Application will not occasion any prejudice to the Respondent.
11. That this Application has been done without any unreasonable delay.
12. That It is therefore in the interest of Justice that this Application is considered urgently and the reliefs sought granted.
13. 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.
14. 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(KG-1); a copy of the filed memorandum of appeal(KG-2), a copy of the valuation report and a copy of log book for Motor Vehicle Reg. No. KCB 015G(KG-3).
15. The application as opposed by the respondent /Decree Holder who filed grounds of opposition dated 30th April 2025 stating as follows:-
16. That Order 42 rule 6 of the Civil Procedure Rules governs the issuance of a stay of execution on appeals from a decree.
17. That no decree has been obtained from the pronounced Judgment dated 18th March, 2025.
18. That contrary to Order 42 rule 6(2) no substantial loss has been pleaded nor proved by the Applicant in the application dated 11/04/2025 nor has any security been ordered by any court.



19. That the Applicant has not provided any authority for its representation and the making of applications, or appearance by any natural person on its behalf, contrary to Order 9 rule 2 (c) of the Civil Procedure Rules.
20. That the Applicant has not furnished the Court with any resolution from it as a corporate body authorizing the surrender of Motor Vehicle Registration Number KCB 015G nor proof of its ownership of the offered security.
21. That the Applicant has not furnished the Court with any recent valuation report with regard the Motor Vehicle offered as security for costs and the award.
22. That the surrender of the Motor Vehicle is not a surrender of ownership, or possession, sufficient to satisfy a decree outside the issuance of further binding orders from this Honourable Trial Court.
23. That the Applicant has not distinguished the Motor Vehicle from a tool of trade incapable of being attached and sold, nor made any binding averments toward the same.
24. That the Applicant has not provided a schedule of creditors and any priority among them over the prospected decree holder based on floating charges or any debt taken contingent on the vehicle.
25. That the Respondent, as instituted by the Appellant, in the appeal and application is a stranger to the proceedings before the Trial Court at Ruiru MCELR/2024.
26. That therefore, the application can only be deemed as void from the onset and the security offered insufficient with the former being struck out with costs.
27. 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.

28. The Employment and Labour Relations Court (Procedure) Rules 2024 on stay of execution pending appeal states at Rule 21: - “21. (1) Where an application for stay of execution pending appeal has been lodged, 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.” Since the Court Rules are silent on the conditions for granting stay then the lacuna is addressed by Order 42 Rule 6 (2) of the Civil Procedure Rules to wit:- “(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.”
29. 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."

30. 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."
31. 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 if successful on appeal. The respondent filed grounds of opposition and not affidavit hence did not demonstrate ability to refund the money. 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 vs. 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, the was potential substantive loss to the appellants /applicant demonstrated.
32. 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 or title deed and attached valuation report and a copy of the log book(KG-3) The valuation was of Kshs. 1,300,000 and the decretal sum of Kshs. 421,502 plus interest and ½ costs.
33. The respondent was opposed to the offer of log book or title deed stating the same was offered by an employee and that the security was not good.
34. 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."
35. 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.



Conclusion

36. In conclusion, the application dated 11th April 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 logbook of Motor Vehicle Registration number KCB 015G valued at Kshs. 1,300,000/- as security 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.
37. Mention on 14th July 2025 for further directions in the appeal.
38. It is so Ordered.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT MACHAKOS THIS 4TH DAY OF JULY 2025.

J.W. KELI,

JUDGE .

In The Presence Of:

Court Assistant: Otieno

Applicant – Thuku h/b Wangari

Respondent: absent

