



**Yusuf & another v Adanje (Environment and Land Appeal E024 of 2023)
[2024] KEELC 13386 (KLR) (21 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13386 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND APPEAL E024 OF 2023
E ASATI, J
NOVEMBER 21, 2024**

BETWEEN

ADAN OSMAN YUSUF 1ST APPELLANT

TOUCH ENERGY COMPANY LIMITED 2ND APPELLANT

AND

HENRY OLUOCH ADANJE RESPONDENT

*(An appeal against a portion of the judgement and decree of the
Hon. S. O. Temu Senior Principal Magistrate in Nyando PMC
E L CASE NO. E061 OF 2022 delivered on 9th May 2023.)*

RULING

1. The application before court for determination is the Notice of Motion dated 15th October, 2024 brought by the Respondent in the appeal pursuant to the provisions of Section 1A, 1B, 3A of the [Civil Procedure Act](#) Cap 21, Order 42 Rule 6(1) and Order 51, Rules 1 & 3 of the Civil Procedure Rules. The application seeks for an order of stay of execution of the judgement delivered on 9th October, 2024 pending hearing and determination of the Appeal to the Court of Appeal.
2. The application was based on the grounds that an appeal has been preferred to the Court of Appeal against the Judgement and that the appeal has good chances of success.
3. The application was supported by the averment contained in the Supporting Affidavit of Henry Oluoch Adanje sworn on 15th October, 2024 and the annexure thereto.
4. The application was opposed vide the contents of the Replying Affidavit sworn by Adan Osman Yusuf. The Respondent's case is that the Applicant has failed to provide security as a pre-condition for grant of an order of stay of execution. That the Applicant has not demonstrated the substantial loss he will suffer if the order of stay of execution is not granted. That the Applicant has no arguable appeal.



5. The application was argued orally on 28th October, 2024. I have taken into account the submissions made. The Respondents proposed that the Applicant deposit the entire of the decretal sum in court or in a joint interest earning account in the name of Counsel for the parties as a condition for the stay order if the court is inclined to grant the application.
6. The applicant undertook to abide by the conditions that the court will set.
7. Taking all the circumstances of the case into account and particularly that the Applicant has already filed Notice of Appeal, I find that the application is merited and I hereby allowed it as follows: -
 - i. An order of stay of execution of this court's judgement dated 9/10/2024 is hereby granted on condition that the Applicant deposits one half (1/2) of the decretal sum as security for due performance of such order as may ultimately be binding on the applicant, in an interest earning account in the joint names of Counsel for the Applicant and Counsel for the Respondents within 45 days hereof, failing which the stay of execution order granted herein shall lapse.
 - ii. Costs to the Respondents.

Orders accordingly.

RULING DATED AND SIGNED AT KISUMU AND DELIVERED THIS 21ST DAY OF NOVEMBER, 2024 VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen: Court Assistant.

Raburu for the Applicant.

Omondi for the Respondents.

