



**Unibee Construction Limited v Lorot & another (Suing as the legal administrator of the Estate of Lomerinyang Chepsien) (Environment and Land Appeal 24(B) of 2024) [2025] KEELC 507 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 507 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND APPEAL 24(B) OF 2024  
CK NZILI, J  
FEBRUARY 13, 2025**

**BETWEEN**

**UNIBEE CONSTRUCTION LIMITED ..... APPELLANT**

**AND**

**MARGARET LOROT & KAMOYO TULIAKONG LOMERINYANG (SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF LOMERINYANG CHEPSIEN) ..... RESPONDENT**

*(Being an Appeal from the Judgment derived from SPM Court at Kapenguria by Hon. B.O. Ondego (SPM) dated 04/07/2023 in Civil Case No. 33 of 2018)*

**RULING**

1. The court is asked by an application dated 10/11/2023 to stay execution of the Judgment delivered on 4/7/2023, together with all its consequential orders, pending hearing and determination of the appeal. The reasons are contained on the face of the application and in the supporting affidavit sworn by John Maina Kimondo on the even date.
2. It is deposed that the applicant, in the Judgment, who was condemned to pay general damages of Kshs.5.7 million together with costs and interests and has filed an appeal. The applicant deposes that the bill of costs has been assessed and a decree issued for execution against the company, where he is a director, which, if allowed will render the appeal nugatory and cause the company substantial loss. The applicant deposes that the application is made in good faith, was filed without delay and that it is only fair and in the interest of justice to allow the application.
3. The application is opposed by a replying affidavit of Margaret Lorot sworn on 15/1/2024 for lack of merits, for being empty, lacking basis, as based on an appeal that has no arguable points, for not



- demonstrating any substantial loss or damage and for failing to show whether warrants of execution have been issued.
4. The respondent deposes that it is the estate of the deceased that has suffered most over the land in which the appellant excavated a murrum road and whose valuation report the court based its Judgment on, unlike the applicant who produced none to counter it. The respondent deposes that the applicant's advocates employed delaying tactics at the lower court by way of adjournments, applications, and non-compliance with court directives and appears to be employing similar tactics to prolong the appeal.
  5. The respondent deposes that had it not been that the project that the appellant was constructing at Sebit collapsed compelling them to start afresh, the appellant would have left before the Judgment, leaving her with an empty judgment. The respondent deposes that the appellant has almost completed the project, and its agents are likely to move their equipment and machinery out of the jurisdiction of this court or to an unknown place, making it difficult to trace them.
  6. The respondent deposes that if the application is allowed, security of Kshs.3 million should be put in a joint account for the two advocates on record. The respondent deposes that as the legal administrator of the estate of the deceased, any lease or sale between the appellant and her brother was unlawful for lack of her involvement.
  7. The applicant relies on written submissions dated 19/3/2024. Replying on Order 42 Rule 6 [Civil Procedure Rules](#), the applicant submitted that it would suffer substantial loss or damage, hence rendering the appeal nugatory as held in [James Wangalwa & Another -vs- Agnes Naliaka Cheseto](#) [2012] eKLR. Further, the applicant submitted that the application was filed without inordinate delay, and the court should protect its rights of appeal.
  8. On security the appellant submitted that it was ready to abide by any terms and conditions to be imposed by furnishing appropriate security. Reliance was placed on [Focin Motorcycle Co. Ltd -vs- Ann Wambui Wangu & Another](#) [2018] eKLR and [Butt -vs- Rent Restriction Tribunal](#) [1979] eKLR.
  9. The respondent relies on written submissions dated 15/1/2024 that the motion before the court is empty and amounts to abuse of the court process, for failure to attach the Judgment and decree appealed against. It is submitted that the applicant has not demonstrated the nature of execution it is facing and the likely substantial loss or damage that cannot be compensated by way of damages, if a stay is not granted, as compared to the estate of the decree-holder, since unlawful removal of the murrum from its land.
  10. A party seeking a stay of execution has to apply timeously, demonstrate substantial loss, and offer security for the due realization of the decree should the appeal not succeed. The law has not defined what the maximum or minimum delay is. It all depends on the circumstances of each case. In [Mosonik -vs- Mariantally](#) (Civil Application No. E032 of 2023), [2024] KECA 264 [KLR] (8<sup>th</sup> March 2024) (Ruling), the court held that if the delay is excessively long and unreasonable, the applicant will likely be denied the leave sought. Similarly, the court said that the reasons behind the delay must be rational and convincing.
  11. In [Andrew Kiplagat Chemaringo -vs- Paul Kipkorir Kibet](#) [2018] eKLR, the court said that any delay should satisfactorily be explained to unlock the court's flow of discretionary favor.
  12. The application before the court was filed on 14/11/2023, which was close to four months after the Judgment was delivered. The memorandum of appeal was filed on 27/7/2023. A stay of 30 days was granted on 4/7/2023. The same expired on 4/8/2023. The applicant has not offered reasons for the inordinate delay.



13. In *James Wangalwa & Another -vs.- Agnes Cheseto Naliaka* (*Supra*), substantial loss was defined as the cornerstone of stay. It has to be demonstrated with tangible and cogent evidence since execution per se does not amount to substantial loss. It is not enough to state that the execution is underway, which by itself is a lawful exercise. See *Jenny Luesby -vs- Standard Group Ltd* [2014] eKLR.
14. In *Kenya Shell Ltd -vs.- Kibiru & Another* [1986] KLR 410, the court observed that the court has to balance the two parallel propositions that a litigant should be deprived of the fruits of his Judgment without just cause and secondly, the execution would render the appeal nugatory. The court declined to grant the stay as the refusal of the same could not render the appeal nugatory as it was a money claim.
15. In this application, the applicant has not availed evidence on how payment of the decretal amount would render the appeal nugatory, the difficulty that the respondent would have in repaying the amount if it loses the money, and or expressed fear that the respondent is a woman of straw. In *NIC Bank Ltd -vs.- Aquinas Francis Wasike & Another* [2006] eKLR, the court observed that the legal duty is on the applicant to prove the allegation that an appeal would be rendered nugatory because the respondent would be unable to pay back the decretal sum by expressing a reasonable fear of inability to repay.
16. The respondent has, on the other hand, expressed fear that the applicant is about to leave the jurisdiction and or is about to finish the project and has been moving its equipment to an unknown place or out of the jurisdiction, such that it would be challenging to execute the decree.
17. In my view, the applicant has not demonstrated any substantial loss or damage. An arguable appeal has been defined as one that needs not to succeed but one, that raises arguable points worthy of considering before a court of law. In my view, the points or grounds raised in the appeal are not idle or frivolous.
18. Coming to security, the court in *Gianfranco Manenthi & Another -vs.- Amaco Ltd* [2019] eKLR, the court said that the applicant must show and meet the conditions, especially in a money decree, since in a civil claim, a decree is like a debt owed and due for payment to the successful litigant, which once the appeal fails, the court would release the deposited amount to the respondent in the appeal.
19. The court said that the security is not intended to stifle the right of appeal but is to ensure that the court does not assist litigants to delay execution of the decree, by the filing of vexatious and frivolous appeals. The court went on to say that the deposit of security was not a matter of willingness by the applicant but for the court to determine.
20. In *Arun C. Sharma -vs.- Ashana Raikundalia & Co. Advocates & Others* [2014] eKLR, the court said that the purpose of security is not to punish the judgment debtor but instead is because, in a judgment, the applicant becomes a judgment debtor in relation to the respondent and the security is ultimately binding on the former. In this application, other than stating readiness to abide by any conditions for stay, the applicant has not expressly mentioned what security and for how much it was willing to offer.
21. In *Portriezt Maternity -vs.- James Karanja Kabia*, Civil Appeal No. 63 of 1997, the court observed that the right of appeal must be balanced against an equally weighty rigid right of the plaintiff to enjoy the fruits of his Judgment. There must be a just cause for depriving the respondent of the right to her Judgment. The applicant has not deponed that it is willing to deposit the proposed Kshs.3,000,000/= in an interest-earning account. Written submissions are not pleadings and cannot replace averments that must be made on oath. See *D.T. Moi -vs- Stephen Muriithi* (2017) eKLR. I find the applicant has failed to satisfy the conditions of stay. The application is dismissed with costs. The appeal shall be heard on a priority basis.
22. Orders accordingly.



**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT  
KITALE ON THIS 13<sup>TH</sup> DAY OF FEBRUARY, 2025.**

In the presence of:

Court Assistant - Chemutai

Barongo holding brief for Kaosa for the Respondents

Sugut for Katina for Appellant present

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

