



REPUBLIC OF KENYA



KENYA LAW
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**Chelimo v Aldridge (Civil Appeal E169 of 2023)
[2025] KEHC 1261 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 1261 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E169 OF 2023
DO CHEPKWONY, J
JANUARY 30, 2025**

BETWEEN

LINDA CHELIMO APPELLANT

AND

STEPHEN ANTHONY ALDRIDGE RESPONDENT

RULING

1. Before this court for determination is the Notice of Motion application dated 1st November, 2023, filed by the Applicant seeking the following orders: -
 - a. Spent.
 - b. Spent.
 - c. That there be a stay of execution of the Decree and/or judgment in Thika CMCC No. 204 of 2020 by honourable S. Atambo on 9th May 2023 pending the hearing and determination of the Appeal filed therein.
 - d. That the costs of this application be provided for.
2. The Application is based on the grounds as set out on its face and the supporting affidavit sworn by the Appellant/Applicant, Linda Chelimo, on the even date. The Applicant's case is that she sought and was granted a 45 day stay of execution before the trial court to allow her launch the instant Appeal against the trial court's judgment. On the lapse of the said 45 days, the Respondent is likely to execute the decree and render the appeal nugatory although the Appeal has high chance of success. Thus, the Applicant argues that would be in the interest of justice that the stay of execution be granted.
3. The Respondent opposed the Application through a Replying Affidavit sworn by Stephen Anthony Aldridge on the 19th July, 2023. He avers that the application is misconceived and discloses no grounds for the court to grant the orders of stay sought. He asserts that it is an uncontested fact that he paid



the purchase price of Kshs 4,250,000/= and all costs towards the acquisition of the suit land which the Applicant has been in possession although the Respondent has never made any payments towards its acquisition.

4. The Respondent avers that the Applicant does not stand to suffer any prejudice in the event of execution of the trial court judgment as opposed to him, the Respondent who has been denied the right to use and enjoy the property even after paying the purchase price. The Respondent further avers that the Applicant does not have a known residence in Kenya and has not offered any security for due performance of the decree hence he will suffer great injustice if the application is allowed.

Analysis And Determination

5. Having considered the Application and the responses filed, the sole issue for determination is whether the court can grant the orders of stay sought. The law on stay of execution is enshrined under Order 42 rule 6(2) of the [Civil Procedure Rules](#) which provides: -

“No order for stay of execution shall be made under sub rule (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”
6. I further associate myself with the finding by the court in the case of [RWW v EKW](#) [2019] eKLR, where the court, held:-

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.

7. Taking cure from the above, it is apparent that the court cannot grant stay of execution unless the following three conditions are met:
 - a. The application has been made without unreasonable delay.
 - b. The Applicant will suffer Substantial loss
 - c. The Applicant has offered security for due performance of the decree.
8. Considering if those conditions have been met in view of the facts of this case, on the first condition, whether there was reasonable delay, the judgment subject of this Appeal was delivered on 9th May, 2023, while the present application was filed on 5th June, 2023, hence it cannot be said that the application was filed after unreasonable delay. Furthermore, the Respondent does not dispute that the Application was timeously filed and I find this condition as met.
9. On the second condition, on whether the Applicant stands to suffer substantial loss, the Applicant merely submitted that she is likely to suffer substantial loss but has not offered any evidence to substantiate the position, that court has previously found that it is not enough to simply state that one



is likely to suffer substantial loss without it. This position was reiterated by the court in the case of *Kenya Shell Limited v Benjamin Karuga Kibiru & another* [1986] eKLR, where it was held, thus:-

“Substantial loss in its various forms is the corner stone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore, without this evidence it is difficult to see why the respondents should be kept out of their money”

10. Thus I totally agree that without further evidence on the likelihood of suffering substantial loss, it is difficult to grant the orders of stay sought as there is no reason why the Respondent should be kept away from his judgment.
11. Lastly, on whether the Applicant offered security for the due performance of the decree, the Applicant has not commented on whether she wishes to offer any security for due performance of the decree. Accordingly, I associate myself with the following in the case of *Gianfranco Manentbi & another v Africa Merchant Assurance Company Ltd* [2019] eKLR, where the court held, thus: -

“... the applicant must show and meet the condition of payment of security for due performance of the decree. Under this condition a party who seeks the right of appeal from money decree of the lower court for an order of stay must satisfy this condition on security. In this regard, the security for due performance of the decree under order 42 rule 6(1) of the Civil Procedure Rules, it is trite that the winner of litigation should not be denied the opportunity to execute the degree in order to enjoy the fruits of his judgment in case the appeal fails...”

12. Having earlier on pointed out that the three (3) conditions for stay of execution must be satisfied as a precondition to granting the orders, if any of them has not been fulfilled, then the court cannot grant the orders sought. The Applicant in this case has only fulfilled one of the three conditions outlined above necessary for granting the orders sought hence the court finds that Notice of Motion dated 30th May, 2023, without merit and I proceed to dismiss the same. Cost of the Application shall be in course of the Appeal.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU

THIS 30TH DAY OF JANUARY, 2025.

D.O CHEPKWONY

JUDGE

In the presence of:

Martin – Court Assistant

No appearance for and by Appellant

Mr. Otieno holding brief for Mr. Awa Mutindi counsel for Respondent

