



REPUBLIC OF KENYA



**Modern Oil Processors Limited v Libya Oil Kenya Limited (Civil Case E661 of 2015)
[2025] KEHC 580 (KLR) (Commercial and Tax) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 580 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E661 OF 2015
F GIKONYO, J
JANUARY 30, 2025**

BETWEEN

MODERN OIL PROCESSORS LIMITED PLAINTIFF

AND

LIBYA OIL KENYA LIMITED DEFENDANT

RULING

Stay of execution pending appeal

1. The Notice of Motion dated 31st October 2024 seeks; stay of execution of the Judgment and Decree delivered by Hon. Mshila J. on 4th October 2024 pending the filing of its intended appeal before the Court of Appeal.
2. The application is expressed to be made under Sections 1A, 1B and 3A of the *Civil Procedure Act*, Orders 22 Rule 22 and 42 Rule 6, Order 51 Rule 1 of the Civil Procedure Rules.
3. The application is supported by the affidavit sworn by its Associate Legal Officer, Sharon Chepkorir Mwei on 31st October 2024.
4. In summary, the grounds are that on 4th October 2024, Hon. Mshila J. granted a temporary stay of execution for 30 days; the Applicant filed a notice of appeal dated 8th October 2024 against the impugned Judgment awarding the Plaintiff/ Respondent Kshs. 8M together with interest at Court rates from 21st August 2015; that the decretal sum is now over Kshs. 18M and interest continues to accrue until payment in full; that the Applicant is apprehensive that the Respondent will be unable to refund the decretal sum if the intended appeal is successful; that it stands to suffer substantial loss and irreparable damage if stay is not granted; that it is willing to furnish reasonable security for the due



performance of the decree in the form of a bank guarantee or abide by any other conditions that the Court may impose and that the application has been filed promptly.

5. In opposing the application, the Respondent filed a grounds of opposition dated 15th January 2025 contending that the application is premature and incompetent as costs have not been taxed and that the Applicant has not demonstrated the conditions for grant of stay.

Analysis and Determination

6. The Advocates for the parties appeared before the Court on 21st January 2025. Mr. Muriithi for the Respondent proposed that; stay of execution be granted on the condition that the defendant deposits the entire decretal sum in a joint interest-earning account within 14 days. On the other hand, Mr. Ochieng' holding brief for Mr. Kiche for the Applicant proposed furnishing of a reasonable security for the due performance of the decree in the form of a bank guarantee.
7. It is the Court's discretion to determine suitable security depending on the circumstances of the case. *Arun C. Sharma v Ashana Raikundalia t/a Raikundalia & Co. Advocates & 2 Others* [2014] eKLR
8. In determining the nature or amount of security for purposes of order 42 rule 6 of the CPR, the court should also be minded that; "...insistence on a policy or practice that mandates security, for the entire decretal amount is likely to stifle possible appeals –especially in a Commercial Court, such as ours, where the underlying transactions typically tend to lead to colossal decretal amounts". *Sewankambo Dickson Vs. Ziwa Abby HCT-00-CC MA 0178 of 2005*, the High Court of Uganda at Kampala.
9. Based on the facts of this case, the Court makes the following orders:-
 1. A stay of execution pending the hearing of the appeal on condition that the Applicant deposits one half of the decretal sum in an interest-earning account in the joint names of legal counsel for the parties herein within 30 days of today.
 2. In event of failure to comply with (1) above, the stay will automatically lapse without any necessity to apply.
 3. The Applicant shall bear the costs of this application.

DATED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 30TH DAY OF JANUARY, 2025

F. GIKONYO M

JUDGE

In the presence of: -

1. Muriithi for the Plaintiff
2. Kichi for the defendant

