



REPUBLIC OF KENYA



**Solza Limited v Mbuvi & 2 others (Civil Appeal E1174 of 2024)  
[2025] KEHC 686 (KLR) (Civ) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 686 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E1174 OF 2024**

**LP KASSAN, J**

**JANUARY 30, 2025**

**BETWEEN**

**SOLZA LIMITED ..... APPLICANT**

**AND**

**LILIAN MUENI MBUVI ..... 1<sup>ST</sup> RESPONDENT**

**KENNEDY WACHIRA MUHIA ..... 2<sup>ND</sup> RESPONDENT**

**CRINEX LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This ruling is in respect to the Notice of Motion dated 10<sup>th</sup> October, 2024 (the Motion) brought by Solza Limited (hereafter the Applicant) supported by the grounds set out on its body and the facts stated in the affidavit of the Applicant's Country Manager, Michael Wanganga, and seeking a substantive order for the enlargement of time for filing an appeal against the judgment delivered by Hon. H.A. Okello on 13<sup>th</sup> September, 2024 in Milimani MMCC No. 5420 of 2023 (the suit) upon which the memorandum of appeal on record be deemed to be properly on record; and a further order for a stay of execution of the aforesaid judgment and decree pending the hearing and determination of the appeal, more specifically a stay of release and/or sale of the motor vehicle registration number KDG 033N (the subject motor vehicle) to Kennedy Wachira Muhia (hereafter the 2<sup>nd</sup> Respondent) and/or his authorized agents, pending hearing and determination of the appeal.
2. The Motion is expressed to be brought under Sections 1A, 1B and 3A of the [Civil Procedure Act](#) (CPA); and Order 42, Rule 6(1) of the Civil Procedure Rules (CPR).
3. In his supporting affidavit, the deponent stated that the trial court delivered judgment on 13<sup>th</sup> September, 2024 thereby awarding the Applicant a sum of Kshs. 1,138,500/- arising out of a loan



- agreement facility executed between the Applicant (being the lender) and Lilian Mueni Mbuvi (hereafter the 1<sup>st</sup> Respondent) (being the borrower) and upon which the subject motor vehicle acted as collateral with the consent of the 2<sup>nd</sup> Respondent. The deponent further stated that the sum awarded was however, less the interest and penalties accrued on the outstanding loan sum. That notwithstanding, the trial court in its judgment declared the 2<sup>nd</sup> Respondent to be the rightful owner of the subject motor vehicle, which was at all material times being held at Lang'ata Police Station, and hence ordered that the said vehicle be released to the 2<sup>nd</sup> Respondent.
4. The deponent averred that the Applicant being dissatisfied with the aforesaid decision, instructed his advocate on record to lodge an appeal against it, hence the present appeal which raises arguable grounds of appeal as seen in the memorandum of appeal on record.
  5. That in view of the foregoing circumstances, unless the order for a stay sought is granted, the Applicant stands to suffer irreparable loss and damage since there is a likelihood that the 2<sup>nd</sup> Respondent will repossess and dispose of the subject motor vehicle. That furthermore, the assets and means of the 2<sup>nd</sup> Respondent are unknown and hence if the subject motor vehicle is repossessed and sold and the appeal eventually succeeds, the Applicant may be unable to recover the proceeds of sale thereof.
  6. The 2<sup>nd</sup> Respondent swore a replying affidavit on 26<sup>th</sup> November, 2024 to resist the Motion. Therein, he deposed inter alia, that the subject motor vehicle had been held at Langata Police Station for a period of 10 months pending conclusion of the suit, during which time its condition deteriorated significantly, to the detriment of the 2<sup>nd</sup> Respondent. The 2<sup>nd</sup> Respondent further deposed that any further detainment of the said motor vehicle would therefore be detrimental to his proprietary interests. That in the circumstances, it would only be fair to have the subject motor vehicle released to the 2<sup>nd</sup> Respondent pending hearing and determination of the appeal, so as to prevent any further wastage thereof.
  7. Crinex Limited (hereafter the 3<sup>rd</sup> Respondent) likewise opposed the Motion by way of a replying affidavit sworn by its employee, Timothy Yonga, on 16<sup>th</sup> January, 2025. The deponent averred inter alia, that the trial court rightly concluded that the 2<sup>nd</sup> Respondent is the legitimate owner of the subject motor vehicle and which ownership is confirmed by the 3<sup>rd</sup> Respondent. The deponent equally averred that the trial court, in dismissing the suit as against the 3<sup>rd</sup> Respondent, rightly concluded that no cause of action existed as against it. He further averred that the instant Motion is therefore unsubstantiated, adding that the memorandum of appeal filed does not raise any triable issues for consideration in the appeal.
  8. From the record, it is apparent that the 1<sup>st</sup> Respondent did not participate at the hearing of the Motion.
  9. Directions were previously given by this court on 11<sup>th</sup> December, 2024 granting leave for the parties to file written submissions on the Motion. However, at the time of writing this ruling, none of the parties had put in written submissions. It is apparent therefore that the parties opted to rely on their respective affidavit evidence.
  10. The court has considered the affidavit material supporting and opposing the Motion. While it is apparent that the orders sought therein are two (2)-fold in nature, with the foremost order seeking an enlargement of time within which to file the appeal, upon its perusal of the record, the court observed that the impugned judgment was delivered on 13<sup>th</sup> September, 2024. The court upon further perusing the record and more particularly the CTS platform, observed that the memorandum of appeal in respect of the present appeal was uploaded on 13<sup>th</sup> October, 2024.



11. Section 79G of the CPA sets the timelines for filing an appeal with the High Court, against the decision rendered by a subordinate court, as follows:

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.

12. Upon consideration of the foregoing, the court is satisfied that the present appeal was filed/uploaded within the statutory timelines. In any event, the Applicant through its deponent, Michael Wanganga, explained that the delay in reflection of payment of the filing fees was occasioned by technical hitches in the Judiciary pay bill system, which led to payment of the filing fees on 14<sup>th</sup> October, 2024. This position has not been challenged by any of the Respondents. In the court’s view, there is no need for the enlargement of time to be sought in the circumstances.
13. That said, the second substantive order seeks a stay of execution of the decree arising out of the impugned judgment, pending the appeal. It is trite law that the courts have discretionary power to grant an order for a stay of execution of a decree or order pending appeal and which discretion ought to be exercised judicially.
14. The applicable provision surrounding the principle of a stay of execution therefore, is Order 42, Rule 6 of the Civil Procedure Rules (CPR) which expresses that:

“(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

(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”.

15. Concerning the first condition being whether the instant Motion has been brought without unreasonable delay, the Applicant availed a copy of the impugned judgment, confirming that the same was delivered on 13<sup>th</sup> September, 2024. It is apparent that the aforementioned ruling triggered the



instant Motion, with the latter being filed within one (1) month of the aforesaid judgment, on 13<sup>th</sup> October, 2024. The court is therefore satisfied that the Motion has been timeously filed.

16. As regards the second condition to do with substantial loss, the significance of establishing substantial loss in any application for a stay of execution was aptly addressed by the Court of Appeal case in the renowned case of *Kenya Shell Ltd v Kibiru & Another* [1986] KLR 410 when it held that:

“Substantial loss in its various forms is the cornerstone of both jurisdictions for granting stay. That is what has to be prevented...”

17. The Court went on to set out the following still on the subject of substantial loss:

- “1. ....
2. In considering an application for stay, the Court doing so must address its collective mind to the question of whether to refuse it would render the appeal nugatory.
3. In applications for stay, the Court should balance two parallel propositions, first that a litigant, if successful should not be deprived of the fruits of a judgment in his favour without just cause and secondly that execution would render the proposed appeal nugatory.
4. In this case, the refusal of a stay of execution would not render the appeal nugatory, as the case involved a money decree capable of being repaid.”

18. The decision of Platt Ag JA, in the Shell case; in the humble view of the court; sets out two different circumstances when substantial loss could arise, and therefore giving context to the 4<sup>th</sup> holding above. The Platt Ag JA (as he then was) stated inter alia that:

“The appeal is to be taken against a judgment in which it was held that the present Respondents were entitled to claim damages. It is a money decree. An intended appeal does not operate as a stay. The application for stay made in the High Court failed because the gist of the conditions set out in Order XLI Rule 4 (now Order 42 Rule 6(2)) of the Civil Procedure Rules was not met. There was no evidence of substantial loss to the Applicant, either in the matter of paying the damages awarded which would cause difficulty to the Applicant itself, or because it would lose its money, if payment was made, since the Respondents would be unable to repay the decretal sum plus costs in two courts.”

19. The learned Judge continued to observe that:

“It is usually a good rule to see if Order XLI Rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the Applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the cornerstone of both jurisdictions for granting 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.”

20. Earlier on, Hancox JA in his ruling observed that:

“It is true to say that in consideration [sic] an application for stay, the court doing so must address its collective mind to the question of whether to refuse it would, render the appeal



nugatory. This is shown by the following passage of Cotton L J in *Wilson -Vs- Church* (No 2) (1879) 12ChD 454 at page 458 where he said:-'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 rendered nugatory. As I said, I accept the proposition that if it is shown that execution or enforcement would render a proposed appeal nugatory, then a stay can properly be given. Parallel with that is the equally important proposition that a litigant, if successful, should not be deprived of the fruits of a judgment in his favour without just cause.'

21. The court considered the averments made on behalf of the Applicant on the manner in which it stands to suffer substantial loss, specifically that unless the stay order is granted as pertains to the subject motor vehicle, then the same will likely be repossessed and sold by the 2<sup>nd</sup> Respondent. It was further averred on behalf of the Applicant that upon sale, there is a likelihood that the Applicant will be unable to recover the proceeds of sale of the subject motor vehicle, from the 2<sup>nd</sup> Respondent.
22. As earlier stated, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents each averred that the 2<sup>nd</sup> Respondent is the legitimate owner of the subject motor vehicle, with the 2<sup>nd</sup> Respondent in particular stating that if the stay order sought is granted, the said motor vehicle will continue to waste away at Lang'ata Police Station where it is being held.
23. The court considered the averments by the Applicant on the manner in which it stands to suffer substantial loss, alongside the rival arguments by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents on the same subject.
24. In the present instance, upon its perusal of the impugned judgment, the court observed that the trial court upon awarding the Applicant a sum of Kshs. 1,138,500/- as against the 1<sup>st</sup> Respondent, entered a declaratory order in favour of the 2<sup>nd</sup> Respondent, thereby declaring him the legitimate owner of the subject motor vehicle and further ordering that the motor vehicle be released to him and/or his agents and that the registration details thereon be updated accordingly. The trial court therefore dismissed the suit against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.
25. Upon consideration of the foregoing factors coupled with a perusal of the memorandum of appeal on record, it is apparent that the subject motor vehicle forms the subject matter of the present appeal, with the Applicant similarly claiming rightful ownership thereof.
26. In the premises, the court deems it prudent and necessary to preserve the subject matter, namely the said motor vehicle, pending outcome of the appeal. To add on, in the absence of anything to indicate the 2<sup>nd</sup> Respondent's financial capacity or ability to refund the proceeds of the subject motor vehicle upon sale, the court finds that the Applicant has reasonably demonstrated the manner in which it would stand to suffer substantial loss if the order for a stay of release and sale of the said motor vehicle is denied.
27. The condition on provision of security for the due performance of the decree or order would not apply in the present circumstances, since the orders pertaining to the subject motor vehicle are non-monetary in nature.
28. The upshot therefore is that the Notice of Motion dated 10<sup>th</sup> October, 2024 partially succeeds. Consequently, an order for a stay of execution of the judgment as relates to the release and/or sale of the motor vehicle registration number KDG 033N to Kennedy Wachira Muhia whether by the 2<sup>nd</sup> Respondent and/or his authorized agents be and is hereby issued, pending hearing and determination of the appeal. For purposes of expediency in the appeal, the court further orders that directions on the appeal be taken on priority basis. Costs of the Motion shall abide the outcome of the appeal.



**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30<sup>TH</sup> DAY OF JANUARY 2025.**

**HON. L. KASSAN**

**JUDGE**

In the presence of:

Wanene for the Appellant

Nyamuuho for 2<sup>nd</sup> Respondent holding brief Njeru for 3<sup>rd</sup> Respondent

Guyo - Court Assistant

