



Amugune v Wanjofu; Amugune (Interested Party) (Civil Appeal 2 of 2025) [2025] KEHC 2568 (KLR) (27 February 2025) (Ruling)

Neutral citation: [2025] KEHC 2568 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CIVIL APPEAL 2 OF 2025
RK LIMO, J
FEBRUARY 27, 2025**

BETWEEN

MARY ALENGA AMUGUNE APPELLANT

AND

SOPHIE NAUMWO WANJOFU RESPONDENT

AND

JAFRED AMUGUNE INTERESTED PARTY

RULING

1. Before this court is a Notice of Motion dated 23/1/2025 brought by Mary Alenga Amugune, the applicant who seeks the following prayers namely;-
 - i. Spent
 - ii. That pending the determination of this application and the appeal, there be a stay of sale of that property Title Number Nairobi Block 61/505 House No.29 Kibera Olympic Estate measuring 0.016ha registered in the name of Jafred Amugune, the interested party herein.
 - iii. That there be a stay of execution of the judgment and subsequent decree made in Kitale CMCC No.479/21 pending the hearing and determination of the appeal herein.
 - iv. Costs of this application.
 - v. Any other relief that shall give in the circumstances.
2. The applicant has raised the following grounds in her application;-
 - a. That she is a wife to the interested party herein.



- b. The interested party was sued in Kitale CMCC No.479/21 for a sum of Kshs.2 Million and upon entry of judgment and interests the sum rose to Kshs.2,532,880/-.
 - c. That subsequently an attachment order was made in respect to L.R. NO.Nairobi Block 61/505 House No.29 Kibera Olympic Estate where she resides with her children.
 - d. That her objection proceedings were dismissed.
 - e. That the Auctioneer has now moved in to advertise the property for sale on 30/1/2025.
 - f. That if the house is sold the applicant and her children who school are going will suffer irreparable loss.
 - g. That the applicant has no alternative home.
 - h. That she has high chances in the appeal herein.
3. She has sworn an affidavit sworn on 23/1/2025 to support her application.
 4. In her oral submissions through her counsel M/s Keya Advocate, the applicant submits that she has appealed against the dismissal of her objection proceedings filed in the lower court.
 5. She submits that she stands to suffer irreparable loss as the Auctioneer has advertised for sale of the property where she lives with her children.
 6. She submits she is willing to provide security but urges this court to make special consideration given that the subject matter is a place she calls home where she lives with her family.
 7. It is her contention that the appeal raises substantial issues and unless stay is granted she will suffer substantial loss.
 8. The respondent has opposed this application through a replying affidavit sworn on 20/2/2025.
 9. The respondent faults the applicant for delay and terms this application as an afterthought. She points out that judgment in the trial court was delivered on 27/6/2023 and decree issued on 22/9/2023.
 10. She through learned counsel Mr Songole submits that the applicant has failed to satisfy the conditions set under the provisions of Order 42 Rule 6 of the Civil Procedure Rules.
 11. Apart from the delay, the respondent contends that the applicant has not offered any security for due performance of the decree in her application or affidavit in support.
 12. The respondent further avers that she claims that the subject matter is a matrimonial property is unsupported or unsubstantiated by any evidence.
 13. The respondent contends that the applicant is only out to cause delay because no proof of marriage has been tendered to prove that the applicant is married to the interested party.
 14. This court has considered this application and the response made. This is an application for stay of sale and stay of execution brought under the provisions of Order 42 Rule 6 of the Civil Procedure Rules. The applicant has also invoked the provisions of Sections 1A, 1B, 3A, 63(e) of the *Civil Procedure Act* and Article 159 and 165 of the *Constitution*. The primary provisions applicable herein are the provisions of Order 42 Rule 6 of the Civil Procedure Rules. Order 42 Rule 6 provides as follows:-

“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except 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”.

An appeal in itself therefore does not operate as an automatic stay of execution of a decree. The provisions of Subsection 2 of the same provisions is even candid as it provides as follows:-

“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”.

15. Flowing from the above it is pertinently clear that an application for stay of execution must demonstrate the following to the satisfaction of court;-
 - i. That a substantial loss will occur unless stay is granted.
 - ii. An offer for security for due performance of decree.
 - iii. That the application is brought without delay.
16. The 3 conditions are imperative to a grant of stay of execution.
17. In considering this application this court has applied the above tests with a view to arriving at a just conclusion.
18. I will begin with time it took the applicant to lodge this application. The contention that there has been unreasonable delay in bringing this application appears well grounded because though the appeal per se is not against the judgment or decree passed on 22/9/2023, it actually seeks to stay the said decree. The applicant has offered no explanation to explain her inaction from the time judgment and the subsequent decree was passed against her husband to the time she filed this application. In the absence of any explanation to explain the delay, the only assumption drawn is that the delay is unreasonable.
19. On the question of substantial loss, the respondent’s contention that the applicant has not tendered any evidence to show that she is the wife of the interested party or that the subject property is a matrimonial home, has gone without any sufficient answers. The respondent in her affidavit sworn on 20/2/2025 avers that the applicant’s claim that her and her children will suffer irreparably is false, speculative and unsubstantiated. The above statement made on oath has not been denied or contested by the applicant and the end result is that her claim of substantial loss is unsupported and cannot be sustained.
20. On security, the applicant through counsel made a feeble attempt to offer security but prayed for special consideration that the subject matter is a matrimonial home. What comes out clearly in this circumstance is that the applicant is either not able/ready to offer security or unwilling to do so. This court finds that the applicant has failed to satisfy the condition of offering security.



In summary this court finds that this application lacks in merit as it has failed to satisfy the conditions set under Order 42 Rule 6 of the Civil Procedure Rules. The same is dismissed with costs.

DELIVERED, DATED AND SIGNED AT KITALE THIS 27TH DAY OF FEBRUARY, 2025.

R.K. LIMO

JUDGE

Ruling delivered in open court

In the presence of;

Songole for the Respondent

N/A for applicant and Counsel

