



Kabucho t/a Nyahururu Service Station v NG-CDF Board & another (Civil Case 3 of 2023) [2025] KEHC 2537 (KLR) (Civ) (27 February 2025) (Ruling)

Neutral citation: [2025] KEHC 2537 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CIVIL
CIVIL CASE 3 OF 2023
KW KIARIE, J
FEBRUARY 27, 2025**

BETWEEN

EDWARD MUNGAI KABUCHO T/A NYAHURURU SERVICE STATION APPLICANT

AND

NG-CDF BOARD RESPONDENT

AND

NDARAGWA CONSTITUENCY DEVELOPMENT FUND COMMITTEE DEFENDANT

RULING

1. The 2nd defendant/applicant herein moved the court through a Notice of Motion dated the 23rd day of August 2024. It was brought under Order 42 Rule 6(4) and Order 51 Rule 1 of the Civil Procedure Rules. The applicant is seeking the following orders:
 - a. This application should be certified as urgent and heard extensively in the first instance. [spent]
 - b. That this honourable court be pleased to order a stay of execution of the judgment and decree delivered on 7th December 2022 in Nyandarua HCCC No. 3 of 2023, pending the hearing and determination of this application.
 - c. That this honourable court be pleased to order a stay of execution of the judgment and decree in this suit pending the hearing and determination of the appeal against the ruling delivered on 26th July 2024.
 - d. That the cost of this application is provided for.



2. The application was premised on the following grounds:
 - a. That the plaintiff/respondent has instructed a firm of auctioneers, Tango Auctioneers, who have proclaimed for attachment the Applicant's assets.
 - b. That upon the lapse of seven (7) days from the date of the proclamation, 20th August 2024, the auctioneer shall seize and advertise for sale the 2nd defendant/applicant's assets.
 - c. That the applicant is a Government entity delivering services and implementing national government projects in the Ndaragwa constituency, and the seizure and sale of the proclaimed goods shall absolutely impede and cripple the 2nd defendant/applicant from undertaking public duty.
 - d. That unless the application herein is heard urgently and orders sought granted, the plaintiff/Respondent will continue to execute the judgment and decree against the Applicant and render the appeal nugatory.
 - e. That the 2nd defendant/applicant has moved this court without undue delay.
 - f. That the 2nd defendant/applicant is ready and willing to furnish such reasonable security as may be ordered by this court for the due performance of such decree or order as may ultimately be binding upon the applicant.
3. The respondent opposed the application on the following grounds:
 - a. The applicant has not demonstrated what loss will likely be suffered.
 - b. The application is frivolous and vexatious.
4. The applicant seeks to be granted a stay of execution of the orders issued in the ruling dated 26th July 2024. It is trite law that an appeal does not operate as a stay of execution. Order 42 Rule 6 of the Civil Procedure Rules states as follows:

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.
5. The purpose of issuing an order for a stay of execution was explained in the case of RWW vs EKW [2019] eKLR, as follows:

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.
6. The applicant has not made any offer to the respondent for the stay of execution. After considering all the facts of this case, I make the following orders:



- a. The applicant to pay the plaintiff/respondent half the decretal amount within 30 days of the ruling.
- b. The other half is to be deposited in a joint interest-earning account in the names of the parties' advocates within 30 days of the ruling.
- c. Failure to comply means the plaintiff/respondent will be at liberty to execute.

DELIVERED AND SIGNED AT NYANDARUA THIS 27TH DAY OF FEBRUARY 2025

KIARIE WAWERU KIARIE

JUDGE

