



REPUBLIC OF KENYA



Kariithi v Grandways Ventures Ltd & another (Miscellaneous Civil Application E1131 of 2024) [2025] KEHC 1395 (KLR) (Civ) (27 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1395 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION E1131 OF 2024
TW CHERERE, J
FEBRUARY 27, 2025**

BETWEEN

AGNES NGINA KARIITHI APPLICANT

AND

GRANDWAYS VENTURES LTD 1ST RESPONDENT

KANGETHE ENTERPRISES AUCTIONEERS 2ND RESPONDENT

RULING

1. The Applicant filed in *CMCC6824 OF 2018* seeking to restrain Respondents from distressing her goods for failure to pay rent due and owing. By a judgment dated 20th September 2024, the suit was dismissed with costs to the Respondents.
2. Subsequently, the Applicant moved to this court and filed the application dated 03rd December, 2024 which is premised under the provisions of Section 1A, 1B, 3, 3A and 79G of the [Civil Procedure Act](#), Order 42(6) and Order 50 Rule 6, and Order 51 Rule 1 of the [Civil Procedure Rules](#) seeking orders:
 1. That this Honourable Court be pleased to stay execution in *Milimani CMCC 6824 of 2018*; Alice Ngima Kariithi Vs Grandways Ventures Ltd and Kangethe Enterprises Auctioneers with respect to recovery of rent arrears by the 1st Respondent as against the Applicant and all consequential orders thereof, pending the hearing and determination of the intended Appeal.
 2. That this Honourable Court be pleased to grant leave to the Applicant/ Intended Appellant to appeal out of time against the judgment of the Hon. Wendy K. Micheni, Chief Magistrate delivered on 20th September, 2024 in *Milimani CMCC 6824 of 2018*.
 3. That this Honourable Court be pleased to issue any further orders as it deems fit.



3. The application is based on grounds among others that the judgment which was scheduled for delivery on 20th September 2024 was delivered on 04th November 2024 without notice and Applicant became aware of the judgment on 04th November 2024 and being aggrieved wishes to appeal.
4. The application is additionally supported by Applicant's affidavit sworn on 03rd December 2024 in which she reiterates the grounds on the face of the application. Applicant further states that she is threatened with distress for rents which were the subject matter of the dismissed suit as well as costs of the suit and is likely to suffer loss.
5. The application is opposed by way of an affidavit sworn on 24th February 2025 by Suku Elisha Sherwin, the Legal Officer of the 1st Respondent who deposes that Applicant failed to follow up on the judgment date, has not annexed a draft memorandum of appeal to demonstrate she has an arguable appeal nor demonstrated that the 1st Respondent would be unable to refund the costs if the appeal succeeds.
6. I have considered the application in light of affidavits on record and annexures thereto.
7. The principles for a stay of execution pending appeal under Order 42 Rule 6(1) *Civil Procedure Rules* (Rules) were enunciated by the Court of Appeal in *Butt v Rent Restriction Tribunal* [1979] eKLR and they require the court to satisfy itself that:
 - a) The application has been made without unreasonable delay
 - b) The applicant has an arguable appeal with a probability of success
 - c) The applicant shall suffer substantial loss if the stay is not granted; and
 - d) The security for due performance of the decree has been provided.
8. These principles were reiterated by the Supreme Court in the *Board of Governors, Moi High School, Kabarak & Another v. Malcom Bell* SC Petition No. 6 & 7 of 2013, [2013] eKLR and affirmed in *Gatirau Peter Munya v. Dickson Mwenda Kitihinji & 2 Others*, Application No. 5 of 2014, [2014] eKLR that an appeal or intended appeal must be arguable and not frivolous, that unless the order of stay sought is granted, the appeal or intended appeal, were it to eventually succeed, would be rendered nugatory and in the context of the *Constitution* of Kenya, 2010, that it is in the public interest that the order of stay be granted.
9. In *Jennifer Akinyi Osodo v. Boniface Okumu Osodo & 3 Others* [2011] eKLR, the Court of Appeal emphasized that a dismissal order is a negative order incapable of execution or being stayed. Additionally, in *Mukiri & 2 Others v. Karimi* (Civil Application E002 of 2023) [2023] KECA 1644 (KLR) (26 May 2023), the same Court observed that an order dismissing an application is inherently a negative order, as it does not compel any party to take action but rather denies the relief sought. The court further stated that such orders are generally incapable of execution, except perhaps for the aspect of costs.
10. From the record, it is apparent that the Appellants seek to stay a negative order that dismissed her suit with costs.
11. This is clearly a negative order, as it does not compel the Applicant to take any action. As established in the aforementioned cases, a stay of execution is not available where the Court has issued negative orders, since a refusal to issue the orders cannot be "executed" except for costs.
12. Applying the abovementioned principles to the present case, I find that the Applicant has not met the threshold for grant of stay of execution pending appeal.



13. Concerning leave to appeal out of time, it is on record that the judgment was delivered on 04th November, 2024 having been adjourned from 20th September 2024.
14. The Supreme Court in *Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 Others* [2015] eKLR held that:

An applicant must explain the reasons for the delay and demonstrate any extenuating circumstances to enable the court to exercise its discretion in their favor.
15. In this case, the Applicant has explained that she was not notified of the judgment date. Her contention that she as well as her advocate became aware of the judgment on 29th November 2024 is a reasonable explanation for the failure to file the promptly.
16. Based on the foregoing analysis, it is hereby ordered:
 1. The prayer for stay execution of the judgment in Milimani CMCC 6824 of 2018 is not merited and it is hereby dismissed.
 2. The Applicant is granted 14 days from today's date to file the intended appeal.
 3. Costs of this application shall be paid by the Applicant to the 1st Respondent

DELIVERED AT NAIROBI THIS 27TH DAY OF FEBRUARY 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Ubah

For Applicant - Ms. Wambui for GNK& Associates LLP

For 1st Respondent - Mr. Odhiambo for Wasuna & Co. LLP

For 2nd Respondent - N/A

