



REPUBLIC OF KENYA



**Rasha Enterprises Limited v Watenga t/a Front Bench Auctioneers (Civil Appeal  
E034 of 2024) [2025] KEHC 4066 (KLR) (Civ) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4066 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ISIOLO  
CIVIL  
CIVIL APPEAL E034 OF 2024  
SC CHIRCHIR, J  
MARCH 27, 2025**

**BETWEEN**

**RASHA ENTERPRISES LIMITED ..... APPELLANT**

**AND**

**JOSEPH KIARIE WATENGA T/A FRONT BENCH  
AUCTIONEERS ..... RESPONDENT**

**RULING**

1. What is coming up for determination is the Application dated 02/9/2024. It seeks stay of the rulings delivered by the Chief Magistrate in Isiolo CMCC No. 46, 47, 48 and 49 all of 2015, pending Appeal.
2. It seeks orders as follows:
  1. Spent.
  2. Spent.
  3. Spent.
  4. That an order of this Honourable Court do issue staying execution of the ruling delivered on 23rd July, 2023, decree and all consequential orders in the matter pending the hearing and determination of this Appeal.
  5. That this Honourable Court be pleased to issue an order staying execution in Isiolo CMCC Nos. 46, 47, 48, and 49 all of 2015 pending the hearing and determination of the Appeal.
3. The Application proceeded by way of written submissions. Both parties have filed the submissions and I have perused the same.



## **Analysis and Determination**

4. I have read the Application, the Supporting Affidavit, the Replying Affidavit and Parties' Submissions as aforesaid.
5. Firstly, though the Applicant seeks for stay pending Appeal, he has not addressed the principles which guide the courts in determining whether to grant stay or not, perhaps with the exception of the question of the chances of the Appeal. The issue of substantial loss, whether the Appeal will be rendered nugatory or issues of security have not been addressed.
6. I also wish to point out that I have noted a number of issues raised in the replying Affidavit, which have not been met with any rebuttal from the Applicant. I will therefore treat these facts as uncontested.
7. In regard to whether the Appeal has high chances of success the issue that has been raised in the memorandum of Appeal is whether there was stay in CMCC No. 46, 47, 48 and 49 of 2015, when attachment orders were issued on Miscellaneous No. E013 of 2024.
8. I have seen a ruling by Justice Muriithi, in Meru HCCA No. E202/2023 staying orders in CMCC No. 47/2015, HCCA No. 210/2023 staying CMCC NO. 48/2015 and HCCA E104/2023, staying CMCC No. 49/2023 The stay orders were granted conditional upon the Applicant depositing part of the decretal sums. The Applicant is silent on whether he complied with the conditions or on the fates of the Appeals pending before the Meru High court.
9. The Respondent has however informed the court that there was no compliance, and what the Applicant did instead was to go back to the lower court to seek yet other orders of stay. The respondent has not refuted this fact.
10. Indeed, I have seen a temporary order made by the Chief Magistrate's Court at Isiolo on 3/6/2024. The orders are in respect to Isiolo CMCC No. 47/2015, 46/2015, 47/2015, 48/2015 and 49/2015. The stay was granted, that time round, pending the hearing of a declaratory suit. Effectively the lower court order afforded the Applicant another stay of execution without the shackles, of the conditions that had set by the High Court at Meru in HCCA E202/2023, 210/2023 and 104/2023. The move was irregular and amounted to an abuse of the court process.
11. Nevertheless, the order of 3/6/2024 was to subsist up to 24/6/2024. That is according to paragraph 3 of the order. Therefore at the time the court gave "break -in" orders on 23/7/2023, there was no pending stay, or at least none has been shown to have existed. As for CMCC No. 46/2023, the issues between the Applicant and his insurer has no bearing to the Respondent's claim.
12. In view of the foregoing, I have my reservations on the chances of the Appeal succeeding.
13. Secondly, seeking stay in CMCC No. 47, 48 and 49 is a matter of sub-judice as the said suits are subject of pending Appeals, namely Meru HCCA's Nos. 202/2023, 203/2023 and 204/2023.
14. What the Applicant is doing is engaging in a blatant abuse and misuse of the process. Playing "hide and seek" with the court directives will not make them go away or cease to have effect.
15. The application is devoid of merit. It is hereby dismissed, with costs to the Respondent.

**DATED SIGNED AND DELIVERED AT ISIOLO THIS 27TH DAY OF MARCH, 2025**

**S .CHIRCHIR**

**JUDGE.**



In the presence of :

Roba Katelo- Court Assistant

Mr. Muli for the Applicant

Mr. Bundi for Mr. Kiautha for the respondent

