



REPUBLIC OF KENYA



KENYA LAW
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**Chepkurui v Maisha Bora Sacco Society Limited (Civil Miscellaneous
E1142 of 2024) [2025] KEHC 3694 (KLR) (Civ) (26 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3694 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
CIVIL
CIVIL MISCELLANEOUS E1142 OF 2024
LP KASSAN, J
MARCH 26, 2025

BETWEEN

AGNES CHEPKURUI APPLICANT

AND

MAISHA BORA SACCO SOCIETY LIMITED RESPONDENT

RULING

1. Before this court is a Notice of Motion dated 08.10.2024 brought under Article 159 Constitution of Kenya, Sections 1A, 1B, 3 and 3A of the Civil Procedure Act, Order 42 Rule 6, and Order 51 Rule 1 of the Civil Procedure Rules 2010, , and all enabling provisions of the law wherein the Applicant seeks orders to wit:
 - a. Spent
 - b. Spent
 - c. That the Honourable court be pleased to issue an order staying the execution of the ruling delivered by Hon. Janet Mwatsama on 13.09.2024 and the order arising therefrom, pending the hearing and determination of the Appeal filed herewith.
 - d. That the costs of this application be provided for.
2. The application is premised on the grounds that the lower court's decision was unjust, that the Appellant will suffer substantial loss, and that the appeal raises arguable points of law and fact.
3. The application was canvassed by way of written submissions.



Applicant's submissions

4. The Applicant, through the supporting affidavit and submissions filed by Omondi Ogutu & Associates, argues that unless stay is granted, the Respondent will proceed with execution which will render the intended appeal nugatory. The Appellant also contends that the trial magistrate erred in both fact and law by misapprehending the evidence and wrongly entering judgment.
5. It is submitted that the Applicant is willing to furnish security and that the Respondent will not be prejudiced by the grant of stay.

Respondent's submissions

6. In opposition, the Respondent filed a replying affidavit sworn on 18th October 2025 and submissions through the firm of Kinyua and Maingi Advocates. The Respondent maintains that the application is frivolous and intended to delay justice. It is argued that the Applicant has neither demonstrated substantial loss nor offered credible security. The Respondent further contends that the appeal has little chance of success.

Analysis & Determination

7. I have considered the Application, responses and the submissions filed herein. The main facts relating to the Application herein are not in dispute. These include the existence of the ruling in Co-operatives Tribunal Case No. E452 of 2024 delivered on 13.09.2024 in favour of the Respondent.
8. The issues for determination herein are
 - i. Whether to grant stay of execution in Co-operative Tribunal Case No. E452 of 2024 pending the hearing and determination of the appeal?
 - ii. Who should bear the costs?
9. The issue as to whether there ought to be stay of execution of the ruling of the tribunal pending the hearing and determination of the appeal are based upon principles which the such a prayer can be allowed are now well settled from the authorities from this court and from the superior courts. See *Halai & Ano.-vs-Thornton & Turpin (1963) Ltd [1990] eKLR*, *Butt-vs-Rent Restriction Tribunal p1982] KLR 417*.
10. Generally, a stay of execution is provided under Order 42 Rule 6 of the Civil Procedure Rules 2010 which provides:

“Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”
11. For orders of stay of execution to be granted, the Applicant must satisfy the conditions to wit that substantial loss may result to the Applicant unless the order is made; that the application has been made without undue delay; and that 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 See *Amal Hauliers Limited-vs-Abdulnasi Abukar Hassan (2017) eKLR*.
12. The court ought to fairly take into account the interests of the Respondent, who has been deprived of the benefits of his judgment, in addition to the Appellant's right to ventilate their case which the court



should not be quick to deny. See *Kenya Shell Ltd. v. Kibiru & others* (Supreme); *Attorney General v. Halal Meat Produces Limited*, Civil Application No. Nairobi 270 of 2008; and *Mukuma v. Abuoga* (1988) KLR 645.

13. Where the Applicant is successful, he or she shouldn't be in a position where he or she can't obtain their money back. Additionally, if the Applicant ultimately fails in his intended appeal, the Respondent who has a decision in his favour shouldn't find it difficult or impossible to enforce the decree. This is the guarantee security of costs gives to parties. See *Nduhiu Gitahi & Ano.-vs-Anna Wambui Warugongo* (1988) 2 KLR 100.
14. On the limb of substantial loss, the Applicant asserts that they will suffer irreparable loss if execution proceeds. However, no specific loss has been demonstrated beyond the general assertion that the appeal will be rendered nugatory. The burden of proving substantial loss lies with the Applicant. See *Kenya Shell Limited v Benjamin Karuga Kibiru & another* [1986] eKLR. In the present case, the Applicant has not provided evidence to substantiate this fear or show the Respondent's inability to refund the decretal sum.
15. On the limb of delay, the application was filed on 09.10.2025, shortly after the ruling. There is no delay attributable to the Applicant. This condition is satisfied.
16. On the limb of security, the Applicant has expressed willingness to provide security. However, the nature and extent of such security is not defined. In the case of *Equity Bank Ltd v Taiga Adams Company Ltd* [2006] eKLR, a mere statement of willingness is not enough. The court must be satisfied that the security offered is reasonable.
17. Lastly, on the limb of arguable appeal, an arguable appeal need not be one that will necessarily succeed but must raise bona fide points. See *Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 Others* [2013] eKLR. The memorandum of appeal dated 04.10.2025 a perusal of the same shows there are triable issues.
18. Taking all relevant factors into consideration, I do order that;
 - a. The Applicant will deposit half of the decretal sum into an interest earning account in the joint names of the parties' advocates within 30 days from this Ruling date.
 - b. In default of any of these conditions, the Respondent shall be at liberty to execute.
 - c. The costs of this Application will be in the cause.
19. It is so ordered.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 26TH DAY OF MARCH 2025.

HON. L. KASSAN

JUDGE

In the presence of;

Momanyi holding brief Ogutu for Applicant for the Appellant

Achieng for Respondent for the Respondent

Carol – Court Assistant

