



**County Government of Nyamira v Monarch Insurance Company; Ayako (Interested Party)
(Miscellaneous Civil Case E063 of 2024) [2025] KEHC 5097 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5097 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
MISCELLANEOUS CIVIL CASE E063 OF 2024
WA OKWANY, J
APRIL 30, 2025**

BETWEEN

COUNTY GOVERNMENT OF NYAMIRA APPLICANT

AND

MONARCH INSURANCE COMPANY LIMITED RESPONDENT

AND

HESBON KERONGO AYAKO INTERESTED PARTY

RULING

1. This ruling is in respect to the Application dated 17th October 2024 wherein the Applicant seeks the following orders: -
 1. Spent.
 2. That this Honourable Court be pleased to stay execution of the decree, Certificate of satisfaction of order for costs against the government dated 14th October 2024 and all consequential subsequent orders arising from Keroka CMCC No E045 of 2021 – Hesbon Kerongo Ayako v County Government of Nyamira pending the hearing and determination of the declaratory suit.
 3. The Honourable Court be pleased to issue a stay of execution against any form of execution, arising from the said decree and certificate of satisfaction of order for costs against the government.
 4. The costs of this application be provided for.



2. The Application is supported by the Affidavit of the Applicant's County Chief Officer, Finance Economic Planning Resource Mobilization and ICT Director, CPA Asenath Maobe, and is premised on the following grounds: -
 1. That the Interested Party has obtained a Certificate of Costs dated 14.10.2024 amounting to Kshs 418,013.75/= and has issued a 7-day notice of execution.
 2. That the Applicant has filed a declaratory suit seeking that the Respondent enforces the contract and pays the Interested Party the decretal sum.
 3. That the Applicant stands to suffer substantial and irreparable harm if the execution proceeds, as the execution would severely disrupt government operations, public services, and essential functions while there exists a contract of insurance with the Respondent by which the Applicant expected indemnity from.
 4. That the Applicant's declaratory suit has a strong likelihood of success, and if the execution proceeds before the hearing and determination of the suit, it would render the suit nugatory.
 5. THAT there is no unreasonable delay in bringing this application.
 6. That the Respondent will suffer no prejudice if the stay is granted as the payment of the decretal sum will be determined upon the full hearing of the declaratory suit.
 7. That the balance of convenience tilts in favour of granting the stay to avoid unjust execution against public resources, which may cause irreparable damage to the public interest.
3. The Interested Party opposed the Application through his Replying Affidavit wherein he states as follows: -
 6. That I am aware my advocate on record indeed did proceed and instituted the said proceedings vide Keroka Principal Magistrate's Court Case No E045 of 2021: Hesbon Kerongo Ayako v County Government of Nyamira & Another.
 7. That I know of my own personal knowledge that Judgment was delivered on the 25th Day of January, 2023 wherein the said suit was allowed.
 8. That I further know of my own personal knowledge that the Court awarded me General damages of Kenya Shillings Two Hundred and Forty Seven Thousand and Fifty (Kshs 247,050.00/=) only and costs of the suit. Annexed herewith and marked as "HKA-1" is a copy of the Decree.
 9. That besides, I am aware that my advocate on record proceeded to and filed a Bill of Costs which was taxed on the 31st Day of May, 2023 and a Certificate of costs subsequently extracted and issued by the Executive Officer. Annexed hereto and marked "HKA-2" is a copy of the said Certificate of Costs.
 10. That I am duly informed by my advocate on record that the said Decree and Certificate of costs and Certificate of Satisfaction Order have since been duly served upon the County government of Nyamira, the Applicant herein. Annexed hereto and marked "HKA-3" is a copy of Certificate of Satisfaction Order attesting such.
 11. That the aforesaid Certificate of Satisfaction Order was served upon the Applicant in compliance to provisions of Section 21 of the *Government Proceedings Act*, Cap 40, Laws of Kenya and Order 29, rule 2(2)(b) of the *Civil Procedure Rules, 2010*.



12. That despite the said service, the Respondents have deliberately refused and or ignored to settle the same hence have resorted to amount a Declaratory Suit and the instant proceedings to avoid satisfying the Judgment.
13. That Application herein is an abuse of court process well couched and calculated to deny the Interested Party a chance to enjoy the fruits of his Judgment.
14. That it is not in dispute that this decree has not yet been satisfied by the respondents. Rightly, the Interested Party herein is entitled in law to approach the Court for redress where the respondents fail to satisfy the decree.
15. That as an Interested Party, I am not privy to the contractual engagement between the Applicant and the Respondent therefore I should not be dragged into their issues.
16. That the Applicant has not demonstrated the existence of the purported Declaratory Suit for the court and parties herein to know and/or confirm its existence.
17. That as Decree holder in Keroka Principal Magistrate's Court Case No E045 of 2021: Hesbon Kerongo Ayako v County Government of Nyamira & Another, I am entitled to enjoy the fruits of my judgment and the Applicant is hell-bent in frustrating the efforts in realization of the decretal sum.
18. That if at all the Applicant is acting in above board manner, then it ought to have lodged this Application in the said Declaratory suit (whose existence is unknown) and seek for orders sought.
19. That failure by the government to satisfy the decretal sum is well discussed in the case of Republic v Permanent Secretary Ministry of State for Provincial Administration and Internal Security Exparte Fredrick Manoah Egunza (supra) the Court observed as follows:

“In ordinary circumstances, once a judgment has been entered in a civil suit in favour of one party against another and a decree is subsequently issued, the successful litigant is entitled to execute for the decretal amount even on the following day. When the Government is sued in a civil action through its legal representative by a citizen, it becomes a party just like any other party defending a civil suit. Similarly, when a judgment has been entered against the government and a monetary decree is issued against it, it does not enjoy any special privileges with regards to its liability to pay except when it comes to the mode of execution of the decree. Unlike in other civil proceedings, where decrees for the payment of money or costs had been issued against the Government in favour of a litigant, the said decree can only be enforced by way of an order of mandamus compelling the accounting officer in the relevant ministry to pay the decretal amount as the Government is protected and given immunity from execution and attachment of its property/goods under Section 21(4) of the [Government Proceedings Act](#).”
20. That that the Interested Party successfully prosecuted a suit against the Applicant in Keroka Principal Magistrate's Court Case No E045 of 2021: Hesbon Kerongo Ayako v County Government of Nyamira & Another, obtained a decree and Certificate of Costs which the Respondent has declined to satisfy and this Honourable Court should thereby disallow the instant application.



21. That the intention of the said Applicant is to hold the Interested Party to ransom notwithstanding apparent lack of commitment to settle the Decree thereof.
22. That I urge the Honourable Court not to heed to the Applicant's invitation of staying the execution process; if at all the Applicant has a valid claim against the Respondent, then the same can be reimbursed later on by the Respondent herein.
23. That with all intents and purposes, the instant Application offends all the tenets of litigation and is solely pursued in selfish motives and it is an Appeal in disguise.
24. That when looked at it critically, it readily becomes apparent that the instant Application is surrogate litigation premised on personal foundation, made in bad faith seeking to restrain the Interested Party from enjoying the Judgment thereof.
25. That the averments in the Certificate of Urgency, Notice of Motion application and the affidavit in support are anchored on false assertions by the applicant and maliciously driven and set to depict the true position of this matter.
26. That in the upshot, I am informed by my advocate on record which information I verily believe to be true and correct as follows;
 - a. The requirement of procedural fairness in any decision-making is now a Constitutional prerequisite. It is deeply ingrained therein.
 - b. All actions undertaken by any person and or body which may culminate into a decision being made which may affect a person's rights, interest or fundamental freedom, the decision maker is enjoined and or bound to act in a manner that is expeditious, efficient, lawful, reasonable and procedurally fair.
 - c. The right to fair trial under Article 50 of the Constitution is a component of a fair trial which is a fundamental right and sacrosanct in the Constitution of Kenya 2010.
 - d. The right to a fair trial is a basic and a minimum requirement and cannot be disregarded.
4. The Respondent did not file any response to the Application.
5. The Application was canvassed by way of written submissions which I have considered.
6. I find that the main issue for determination is whether the Applicant has made out a case for the granting of orders for stay of execution of the decree issued in Keroka CMCC No E045 of 2021 pending the hearing and determination of the declaratory suit.
7. The Application is expressed to have been filed under Section 3A and 63 (e) of the Civil Procedure Act, Order 40 Rule 1 and Order 1 of the Civil Procedure Rules.
8. Section 3A of the Civil Procedure Act grants this court the inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of court process while Section 63 (e) of the same Act allows this court to make such interlocutory orders as may appear to be just and convenient.
9. Order 40 Rule 1 of the Civil Procedure Rules, on the other hand, provides for instances when a court may grant orders of temporary injunction.
10. Order 51 of the Civil Procedure Rules provides for the procedure and format of filing applications in court.



11. From the above provisions, cited by the Applicant in bringing this Application, it is clear that none of the provisions speak to the granting of an order for stay of execution pending the hearing of a declaratory suit.
12. Indeed, Order 42 Rule 6 of the [Civil Procedure Rules](#) which the Applicant alluded to, in his submissions, deals with applications for stay of execution pending the hearing and determination of an appeal. The said provision stipulates as follows: -
Stay in case of appeal [Order 42, rule 6]
 - (1) 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.
 - (2) No order for stay of execution shall be made under subrule (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.
 - (3) Notwithstanding anything contained in subrule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.
 - (4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.
 - (5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.
 - (6) 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.
13. The Applicant cited the decision in the case of [Charles Makenzi Wambua v Africa Merchant Assurance Co. Ltd & another](#) [2014] eKLR for the argument that the declaratory suit seeks to compel the Defendant to meet its obligations under the contract of insurance by satisfying the decree issued in the primary suit so as not to render the declaratory suit nugatory.
14. The Applicant's case was that since he was insured by the Respondent, his property should not be attached as he had taken steps to ensure that the decretal sum is settled.



15. Reference was also made to the case of *Ndonye v Invesco Assurance Co. Ltd* (Civil Suit No 23 of 2021) [2022] KEHC 416 (KLR) where it was held: -

“However, one cannot lose sight of the fact that the Applicant is in effect seeking that the Defendants pay the Interested Party the sum due to the Interested Party from the Applicant. Unless some measure of protection is given to the Applicant, his suit as presently framed may well be an academic exercise.”

16. It was not disputed that the Applicant is the Judgment Debtor in Keroka CMCC No E045 of 2021 whereas the Interested Party is the Decree Holder. This means that there is a valid Judgment in favour of the Interested Party which the Applicant is legally liable to settle. The Applicant has not indicated if it has filed any appeal against the said judgment but is pursuing this application for stay of execution of the Judgment pending the determination of the declaratory suit. I find that the provisions of Order 42 Rule 6 of the *Civil Procedure Rules* which govern applications for stay of execution of a decree subject of an appeal, is not applicable in relation to the Judgment entered in the Interested Party’s favour.
17. The Applicant claims that it will suffer substantial loss if the stay sought is not granted since the Interested Party will proceed with the execution process by attaching its properties.
18. From the facts of this case, I take the view that whereas an insured may well be entitled to seek a declaration that its insurer is obligated to settle the claims covered under the Insurance Policy, that statutory right of action does not bar a person who is injured from executing the decree issued in his favour against the insurer directly. I therefore find that the interested Party in this case is not barred, by the declaratory suit, from executing against the Applicant directly. I am guided by the decision in *Butt –vs- Rent Restriction Tribunal* [1979], where the Court of Appeal stated, inter alia, that the power of the court to grant or refuse an application for a stay of execution is discretionary, and that the discretion should be exercised in such a way as not to prevent appeal proceedings.
19. In *James Wangalwa & another v Agnes Naliaka Cheseto* [2012] eKLR, it was held that:-
- “No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”
20. Taking a cue from the decisions in the above cited cases, I find that the Applicant’s assertions that the process of execution is likely to be put in place or that its properties are likely to be attached is not in itself a basis of granting the orders of stay as sought. In my considered view, 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. In this regard, considering that the Judgment in the primary suit is not the subject of an appeal, I find no basis for the granting of stay of execution as sought.
21. In the upshot, I find that the instant application is devoid of merit and I therefore dismiss it with costs.
22. It is so ordered.



**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NYAMIRA VIA MICROSOFT
TEAMS THIS 30TH DAY OF APRIL 2025.**

W. A. OKWANY

JUDGE

