



**Azalea Holdings Limited v Essential Brands Limited (Commercial Case E078 of 2020)
[2025] KEHC 5298 (KLR) (Commercial and Tax) (28 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5298 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E078 OF 2020
JWW MONG'ARE, J
APRIL 28, 2025**

BETWEEN

AZALEA HOLDINGS LIMITED PLAINTIFF

AND

ESSENTIAL BRANDS LIMITED DEFENDANT

RULING

1. On 5th November 2024 this Honourable Court found in favour of the Plaintiff and entered judgment as sought in the Plaint dated 16th March 2020 for the sum of Kshs.50,788,960.80/=. Subsequently and at the time of delivery of the Judgment, the Defendant applied for stay of execution for 30 days to allow it file an appeal to challenge the said decision. Upon due consideration of the oral application, the court declined to grant the prayers sought and instead directed the Defendants to formally move the Court for the said orders.
2. On 13th November 2024 and by an application filed under a Certificate of Urgency, the Defendant moved the court under Order 42 Rule 6 and Order 51 Rule 1 of the *Civil Procedure Rules*, Section 1A, 1B and 3A of the *Civil Procedure Act* seeking the following orders:-
 1. Spent
 2. Spent
 3. That there be a stay of execution in the aforementioned judgment pending the hearing and determination of the intended appeal.
 4. That costs of this Application be provided for.



3. The Application is supported by the grounds set out on its face and the supporting affidavit of Dilpun Shah, a director of the Defendant. The application is opposed and the Plaintiff has filed a replying affidavit sworn by Washington Olima, an officer of the Plaintiff employed as an Accountant in the finance department and sworn on 2nd December 2024. Both parties have filed written submissions which I have carefully considered.

Analysis and Determination

4. In determining an application for stay of execution, the parties agree that the principles that guide the court in an application for stay of execution pending an appeal are grounded in Order 42 Rule 6 (2) of the Rules. In order to succeed, the Applicant must demonstrate that substantial loss may result unless the order of stay is made. It must also demonstrate that the application has been brought without undue delay and lastly, the Applicant must give such security as the court may order for the due performance of the decree or order as the case may be. These principles have been buttressed by decisions of superior courts where it was added that the power to order stay of execution is discretionary and must be exercised in such a way that the appeal is not rendered nugatory and that this discretion is based on the facts and circumstances of each case (see the courts holding in the case of *Halai & Another v. Thornton & Turpin* [1990] KECA 65 (KLR) and in the case of *Butt v Rent Restriction Tribunal* [1979] KECA 22 (KLR)).
5. Order 42 Rule 6 of the *Civil Procedure Rules*, 2010, provides 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.
6. There is a judgment already in place in favour of the Respondent/Plaintiff. The court also notes that the Defendant has already filed a Notice of Appeal to the Court of Appeal and has annexed to the Application, a draft Memorandum of Appeal. The court is therefore called upon to balance the interest of Applicant with those of the Respondent who are anxious to enjoy the fruits of their judgment.
7. The factors that the court must consider in determining whether or not to grant the orders sought are those laid out in Order 42 cited above. From the record, judgment was delivered on 5th November 2024



and the present application was filed on 9th December 2024. The court notes that the application was filed in a timely fashion and without inordinate delay.

8. The second consideration is whether the Applicant has demonstrated sufficient cause for the court to consider if a denial of the orders sought will occasion the Applicant substantial loss. Substantial loss was defined by Warsame J(as he then was) in the case of [Samvir Trustee Limited v Guardian Bank Limited](#) [2007] eKLR, as follows:-

“it is a fundamental to bear in mind that a successful party is prima facie entitled to the fruits of his judgment; hence the consequence of a judgment is that it has defined the rights of a party with definitive conclusion. The Respondent is asserting that matured right against the applicant/defendant.....for the applicant to obtain a stay of execution, it must satisfy the court that substantial loss would result if stay is not granted. It is not enough to merely put forward mere assertions of substantial loss, there must be empirical or documentary evidence to support such contention. It means the court will not consider assertions of substantial loss on the face value but the court in exercising its discretion would be guided by adequate and proper evidence of substantial loss.”

9. Article 48 of the [constitution](#) guarantees all citizens access to justice. It provides as follows “The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.” This right is translated to also mean that a party has a right to pursue his or her rights through the courts to their logical conclusion including the right to file an appeal. The Applicant has demonstrated by filing of the Notice of Appeal that it is interested in challenging the judgment of this court. The Judgment is for the sum of Kshs.50,788,960.80/=, which by all means is substantial. To deny the Applicant the right to proceed to a higher court would amount to the court being seen as fettering the rights guaranteed by Article 48 cited earlier.
10. Having said so, and in view of the above findings and in the interest of justice, the court is alive to the requirements set out under Article 42 of the need for the Applicant to provide security for costs to shield the Plaintiff who already holds a judgment from this court. The court will allow the prayer by the Applicant for grant of an order stay of execution pending the hearing and determination of the intended appeal but on condition that the Defendant does provide security for cost by depositing in court the sum of Kshs.10,000,000/= as security for costs. In the alternative, the Defendant may provide to the Plaintiff a bank guarantee of the full decretal sum from a reputable local bank. The said security shall be furnished within 60 days from the date of this ruling. The same shall be held as security by the court pending the hearing and determination of the Intended Appeal.

Disposition and Conclusion

11. In conclusion the court finds and holds that the Application filed on 9th December 2024 is merited and will allow the same in the following terms:-
 1. That the Defendant is granted a conditional stay of execution of the judgment of 5th November 2024 upon payment of the sum of Kshs.10,000,000/= in court within 60 days from today, as security for costs. The Defendant in the alternative may avail to the Plaintiff a bank guarantee for the full judgment sum of Kshs.50,788,960.80/= from a reputable local bank as security for costs pending the hearing and determination of the intended Appeal. In default, the Plaintiff may proceed to execute the judgment and the resultant decree thereof.
 2. Each party shall bear their own costs of the application.
- It is so ordered.



DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF APRIL 2025

.....

J.W.W. MONG'ARE

JUDGE

In the Presence of:-

1. Ms. Gakure holding brief for Mr. Waioto for the Plaintiff/Respondent.
2. Mrs. Njagi for the Defendant/Applicant.
3. Amos - Court Assistant

