



Rayan Coach Limited v Wanza (Suing as the personal representative of the Estate of Leonard Kimeu Nzioka) (Civil Appeal E335 of 2024) [2025] KEHC 7572 (KLR) (29 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7572 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL APPEAL E335 OF 2024**

EN MAINA, J

MAY 29, 2025

BETWEEN

RAYAN COACH LIMITED APPELLANT

AND

FELISTA SYOKAU WANZA (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF LEONARD KIMEU NZIOKA) RESPONDENT

RULING

1. The Applicant's Notice of Motion is dated 21st October 2025 and is seeking orders for stay of execution pending appeal. The Applicant also seeks to deposit a bank guarantee as security for costs.
2. The application is supported by the affidavit of Ibrahim Omar sworn on 19th December 2024. The gist of the application, as can be discerned from the grounds on its face thereof and in the affidavit sworn by Ibrahim Omar, is that being aggrieved by the judgment of the Trial Court in Kithimani MCCC 143 OF 2025 delivered on 4th December 2024, the Applicant is desirous of bringing an appeal; that the appeal is arguable and has high chances of success; that the underwriter is willing to give a bank guarantee from Family bank as security for the entire judgment; that the application has been brought in good faith and that the 45 days of stay granted by the Trial court has lapsed. On the other hand, the Applicant contends stands to suffer substantial loss and that there has been no inordinate delay in bringing this application.
3. The application was opposed through a Replying Affidavit sworn by Felista Syokau Wanza on 30th January, 2025 where she deposes that the deponent of the supporting affidavit is not a party to this suit neither has he disclosed the relationship with the Appellant. It was submitted that the application is fatally defective violating order 19 rule 3 of the Civil Procedure Rules. Further, that the conditions for grant of an order for stay of execution had not been met; that there was inordinate delay in bringing the application ; she is a person of means working as a businesswoman and hence can refund the decretal



sum in the event the appeal succeeds. She also deposes that there is no risk of execution and this alone cannot prove substantial loss. The court was urged to dismiss the application with costs.

4. Learned Counsels for the parties agreed to canvass the application by way of written submissions. For the Applicant it was submitted that he ought not prove that he has a prima facie case but rather show that the Appeal has merit. That the Respondent shall proceed to execute against the Appellant and auction his property if the order of stay is not granted; that in the Appeal, it will be demonstrated that the Respondent did not discharge its evidentiary burden to warrant the award of Kshs 13,786,456 plus costs and interest amounting to Kshs 533,306.
5. Further, that the appeal was brought without unreasonable delay. Judgment was delivered on 4/12/2024, the appellant lodged the appeal on 27/1//2025; that immediately 45 days stay lapsed, the application herein was filed. It was indicated that the Applicant was willing to comply with the orders on security as may be given by the court. In support of its submissions, Learned Counsel for the Applicant placed reliance on the cases of Vishram Ravji Halai vs Thorntorn & Turpin [1990] KLR 365, Stanley Kang'ethe Kinyanjui vs Tony Ketter & 5 others [2013] e KLR, Reliance Bank Limited vs Norlake Investments Limited [2002] 1 E.A. 227, Port Florence Community Healthcare vs Crown Healthcare Limited, Global Tours and Travels Limited ; Nairobi HC Winding up Cause no 43 of 2000, Charles Kariuki Njuri vs Francis Kimaru Rwara (suing as Administrator of the estate of Rwara Kimaru alias Benson Rwara Kimaru (deceased) [2020] e KLR, James Wangalwa & Another vs Agnes Naliaka [2012] e KLR, National Water Conservation & Pipeline Corporation vs Ngatunyi Enterprises Limited [2016] e KLR, Muriungi Kanoru Jeremiah vs Stephen Ungu M'mwarabua [2015] e KLR, MMW vs JWW & 2 others [2021] e KLR, Absalom Dova vs Tarbo Transporters [2013] e KLR and Forcin Motorcycle C. Ltd vs Ann Wambui Wangui [2018] e KLR
6. Relying on the cases of Century Oil Trading Company vs Kenya Shell Limited Nairobi (Milimani) HCMCA no 1561 of 2002, Samvir Trustee Limited vs Guardian Bank Limited Nairobi (Milimani) HCCC 795 of 1997 and Kenya Shell Limited vs Benjamin Karuga Kibiru [1986] KLR 410 Learned Counsel for the Respondent submitted that the Applicant has not demonstrated the substantial loss he will suffer; that the appeal cannot be the basis for grant of stay of execution and this being a money decree, any amounts can be refunded by the Respondent. Also, that there was delay in filing the application and no explanation has been given for it.
7. On the issue of the bank guarantee, Counsel submitted that the applicant has not offered proper and adequate security since the bank guarantee will expire on 6th July 2024 and there is no guarantee that it will be renewed. To buttress this point, counsel relied on the case of Wanainchi Group (K) Limited and another vs Globecast Africa Limited [2024] KECA 1322 (KLR), Gianfranco Manenthi & Another vs Africa Merchant Assurance Co. Limited [2019] e KLR, Machira vs Machira & Company Limited and Victory Construction vs BM (a minor suing through next friend one PMM) [2019] eKLR.

Determination

8. I have carefully considered the application, the rival submissions, the cases cited and the law. Order 42 Rule 6 (1) and (2) of the Civil Procedure Rules codifies the circumstances under which stay pending appeal can be granted as follows:-
 - “(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.”

9. The impugned judgment was delivered on 4th December 2024 and the appeal should have been filed within 30 days. However, this application was filed after 48 days on 21st January 2025. I find that whereas the application was filed late the delay was not inordinate since it was filed only eighteen days upon lapse of the oral order for stay of execution.
10. On the issue of substantial loss, it has been deposed that unless the orders for stay is granted, the Applicant is likely to suffer substantial loss. Further, that the Appeal raises pertinent issues and the Respondent is a person of unknown means hence the Applicant is apprehensive that the decretal sum may not be refunded in the event the appeal succeeds.
11. On the issue of security, the bank guarantee that had been offered has since lapsed and become inoperative, that bank guarantee is dated 6th July 2023 and was valid for ‘12 months with an option to renew’. The period lapsed on 6th July 2024 and no evidence has been produced that it was renewed. Further, the parties to the guarantee are not parties to the suit therefore cannot be bound by the orders of this court.
12. In the replying affidavit the Respondent raised the issue of the Supporting affidavit being sworn by a person who is a stranger to the suit. However, Counsel did not submit on the issue and this court therefore considers it to have been abandoned and shall make no determination on the same.
13. On the merits of the application, it is my finding that the Applicant has fulfilled the conditions for stay of execution. To begin with the application was filed timeously as a delay of eighteen days since the lapse of the earlier stay of thirty days is not inordinate. Secondly the Applicant is willing to deposit security and thirdly the Applicant has demonstrated that it shall suffer substantial loss were stay not granted and the appeal succeeds in that the Applicant may not be in a position to refund the decretal sum which is quite colossal.
14. In the premises the application is allowed and it is ordered that there shall be a stay of execution of the judgment and decree herein pending hearing and determination of the appeal provided that the entire decretal sum is within thirty (30) days of this ruling, deposited either in court or in an interest earning account in the joint names of Counsel for the parties.

Orders accordingly.

RULING SIGNED, DATED AND DELIVERD VIRTUALLY ON THIS 29TH DAY OF MAY 2025.

E.N. MAINA



JUDGE

In the presence of:

Ms Sirma for Mwhia for Respondent

Ms Muema for the Applicant

Geoffrey – Court Assistant

