



**Agricultural Development Corporation v M/S Eshikhoni  
Auctioneers; Kisongochi & another (Interested Parties) (Civil Appeal  
E047 of 2024) [2025] KEHC 9276 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9276 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
CIVIL APPEAL E047 OF 2024  
RK LIMO, J  
JUNE 30, 2025**

**BETWEEN**

**AGRICULTURAL DEVELOPPMENT CORPORATION ..... APPELLANT**

**AND**

**M/S ESHIKHONI AUCTIONEERS ..... RESPONDENT**

**AND**

**STEPHEN JUMA KISONGOCHI ..... INTERESTED PARTY**

**EMMANUEL PUPU ..... INTERESTED PARTY**

**RULING**

1. The applicant herein, Agricultural Development Corporation has lodged this application dated 6/9/24 seeking the following reliefs namely;
  - a. Spent.
  - b. That there be a stay of execution of the ruling and order in Kitale CMCC No.152 of 2022 and Kitale CMCC NO.149 of 2022 pending the hearing and determination of this application.
  - c. That there be a stay of further execution of the judgment and decree in Kitale CMCC NO.152 of 2022 and Kitale CMCC No.149 of 2022.
  - d. That costs be provided.
2. The grounds are;
  - i. That the applicant has filed appeal herein against the ruling entered against it in Kitale CMCC No.152 of 2022 and in Kitale CMCC No.149 of 2022.



- ii. That the application is made in good faith and without delay.
  - iii. That the applicant has an arguable appeal with high chances of success and that the same may be rendered nugatory if execution is levied.
  - iv. That the applicant is willing to abide by any directions for purposes of hearing and determination of the appeal.
  - v. That the ruling which is the subject of this appeal was unjustified.
  - vi. That if the execution proceeds the appellant will be condemned to pay more than was decreed in the judgment.
3. The applicant through its Regional Manager, Edward Ojode has sworn an affidavit in support of the application where he has basically reiterated the above grounds.
  4. In its submissions through learned counsel Rachel Auta Advocate dated 7/11/24, the appellant invokes the provisions of Order 42 Rule 6(1) Civil Procedure Rules and submits that it stands to suffer substantial loss unless stay is granted. It contends that it has already paid Kshs.619,000 out of Kshs.819,000.
  5. It further submits that its motor vehicle Reg No.KCK 688C was sold at Kshs.700,000 in execution of the decree which translates to a total of Kshs.1,319,000/-.
  6. It submits that the respondent has applied for further warrants which would expose the applicant to a loss of 210,974.
  7. The applicant through a supplementary affidavit sworn by Edward Ojode on 21/3/2015 avers that the total decretal sum in both Kitale CMCC No.149/22 and 152/22 is 870,129 adding that its insurance company paid Kshs.419,000 while the company paid Kshs.200,000/- which totaled to Kshs.619,000/-. He further avers that its motor vehicle Reg No,KCK 688C was sold at Kshs.700,000/- which was used to offset the balance of the decretal sum and has exhibited the certificate of sale. He faults the respondent for asking for further warrants.
  8. The interested party has opposed this application through written submissions dated 28/10/24 done through learned counsel Gacathi & Co Advocates. The interested parties contend that the appeal herein is between the appellant and the respondent and the only issue in the appeal regards disobedience of court orders by the respondent. The interested parties submit that the trial court found that there was no disobedience.
  9. The interested parties submit that the appellant still owes Kshs.210,947 in Kitale CMCC No.152/22 and as such there is no substantial loss shown if the appellant pays the balance arguing that the appellant has not appealed against the decree. They rely on Wachira T/A Wachira & Co Advocates – vs- East African Standard (2002)eKLR where the court found inter alia that once a matter has fully been adjudicated and a decree passed, any subsequent decision that tends to impede the normal flow of justice by suspending enjoyment of consequential benefits of one’s success can only be done in exceptional circumstances after exercise of great caution and finding that suspension is necessary in the interest of justice and fairness.
  10. The interested parties submit that the appellant had the burden to prove that substantial loss would be occasioned unless stay is granted. They rely on Winfred Nyawira Maina –vs- Peterson Onyiego Gichana (2015)eKLR.



11. They further contend that a stay of execution cannot be granted unconditionally. They submit that an applicant must offer security and that the applicant herein has not offered any security.
12. They have further invoked the provisions of Section 1A and 1B of the Civil Procedure Act and submit that a court must take into consideration the overriding objective while exercising any power or discretion in the Act and that the principle applicable is the principle of proportionality and need to create level playing field for all the parties before it.
13. This court has considered this application and the response made. This is an application for stay of execution brought under the provisions of Order 42 Rule 6 of the Civil Procedure Rules. The cited provisions provide as follows;

“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”.

14. A grant of stay of execution is a discretionary matter which can be granted where a sufficient cause is shown and Sub Rule (2) goes on to provide that an order of stay cannot be granted unless the court is satisfied that substantial loss may result to the applicant unless stay is granted. The court may also order for security for due performance of the decree. In either condition, it is apparent that the applicant bear the burden to establish both sufficient cause and demonstrate that substantial loss may result.
15. Having set out the legal requirements for a stay of execution, this court now turns to the facts or issues presented before me.
16. The applicant in this matter was a bit scanty in its affidavit sworn on 6/9/24 in support of this application because it was devoid of facts for example the actual amount in both decrees in Kitale CMCC No.149/22 and 152/22. The applicant needed to give a little bit more to comply with the cited legal requirements under Order 42 Rule 6 Civil Procedure Rules above.
17. In its supplementary affidavit sworn on 21/3/25, through Edward Ojode, the applicant made efforts and explained that in both files the decretal sum was Kshs.870,129 in total and that out of that it paid a total of Kshs.619,000/- while the proceeds of the sale of motor vehicle KCK 688V totaled to Kshs.700,000/-. I have seen the copy of the certificate of sale (Exhibit KS-12) which demonstrates that fact.



18. There is a demonstration by the applicant that the decree holders who are the interested parties herein have received Kshs.1,319,000/- between them. They have not filed any affidavit to challenge the applicant's claim that the proceeds of the sale of motor vehicle Reg KCK 688V were used to offset the outstanding balance on the decree.
19. To that extent this court finds that the applicant has demonstrated sufficient cause to warrant this court to exercise its discretion in its favour. The interested parties have submitted there is a balance owing of Kshs.210,947 but they have not demonstrated how their calculations arrived at that figure visa vis what has been recovered from the applicant.

In the premises, this court finds merit in the application dated 6/9/24. The same is allowed in the following terms;

- i. That there will be a stay of execution in Kitale CMCC No.149 of 2022 and Kitale CMCC No.152 of 2022 pending the hearing and determination of the appeal herein. Costs of this application will be in the appeal.

I direct the appellant to fast-track the filing of the record of appeal so that the appeal can be disposed of timely. A mention date will be taken upon delivery of this ruling.

**DELIVERED, DATED AND SIGNED AT KITALE THIS 30<sup>TH</sup> DAY OF JUNE, 2025.**

**HON JUSTICE R.K. LIMO**

**KITALE HIGH COURT**

Ruling delivered in open court

In the presence of;

Auta for Appellant

Masinde for Intersted Parties

Duke/Chemosop- Court Assistants

