



REPUBLIC OF KENYA



**Ameya & another v Maina (Civil Appeal E003 of 2024)
[2025] KEHC 9742 (KLR) (24 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9742 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E003 OF 2024
DO CHEPKWONY, J
JUNE 24, 2025**

BETWEEN

BENARD BOSIRE AMEYA 1ST APPELLANT

WANDERI KABUU REUBEN 2ND APPELLANT

AND

PENINAH WANGUI MAINA RESPONDENT

RULING

1. For determination before Court is the Notice of Motion application dated 12th January, 2024 wherein the Applicant seeks the following orders:-
 - a. Spent.
 - b. Spent.
 - c. That this Honourable Court be pleased to order stay of execution of the Judgment and/or decree issued by Hon. Mwanamkuu Mwakwambirwa (PM) on the 27th November 2023 in Kiambu Civil Suit No. E275 of 2021 (Peninah Wangui Maina –vs- Benard Bosire Ameya and Wanderi Kabuu Reuben) pending the hearing and determination of this appeal.
 - d. That the costs of this application abide the outcome of the appeal.
2. The application is based on the grounds as set out on its face and the Supporting Affidavit of Kimanzi E. Wambua sworn on the date. The Applicants hold that judgment was entered in favour of the Respondent in the sum of Kshs. 1,500,000/= and the court granted thirty (30) days stay of execution from the date of the said Judgment which was on 27th November, 2023 which period has now lapsed.



3. In response, the Respondent filed a Replying Affidavit sworn by her advocate, Magdalene Nyokabi Waiganjo on 26th January, 2024 wherein she has urged that the application be dismissed with costs for being a non-starter and unmeritorious.
4. The Applicants filed Further Affidavit which was sworn by Kimanzi E. Wambua on 1st February, 2024 arguing that they filed the application and the memorandum of appeal within the required timelines and thus no costs should be awarded.

Analysis and Determination

5. I have read through and considered the application in terms of the grounds set out in the respective affidavits filed by the parties herein for and against it, alongside their respective submissions. I find the issues for determination being whether the Applicant has satisfied the legal threshold for stay of execution order to issue.
6. Order 42 Rule 6 of the Civil Procedure Rules provides for the law on stay of execution as follows:-
 - “No order for stay of execution shall be made under sub rule (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”
7. From the said provisions, it is trite law that for a court to grant stay of execution, three conditions must be met:
 - a. The application has been made without unreasonable delay.
 - b. The Applicant will suffer Substantial loss
 - c. The Applicant has offered security for due performance of the decree.
8. With regard to the period within which the application was made, it is not in dispute that the Judgment herein was delivered on 27th November, 2023 and the present application is dated 2nd January, 2024 which was timely in that the same was filed about five (5) days after the period within which an appeal should have been filed, hence it is confirmed that the application was filed without unreasonable delay.
9. On the second condition of substantial loss, the Applicant has stated that it is likely to suffer substantial loss given that the Respondent is likely to initiate execution proceedings since the thirty (30) days stay of execution have lapsed. The courts have held that it is not enough for a party to simply state that he/she/it is likely to suffer substantial loss. In the case of Kenya Shell Limited –vs- Benjamin Karuga Kibiru & Another [1986] eKLR held:-
 - “Substantial loss in its various forms is the corner stone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore, without this evidence it is difficult to see why the Respondents should be kept out of their money”
10. In the instant case, the court finds that the Applicant is apprehensive of the Respondent moving to execute the Judgment and decree issued by the Respondent. It is worth noting that although the Respondent has remained mute on this save to decry that the basis having been kept away from



enjoying the fruits of her Judgment, which is what the court in the case of Kenya Shell (supra) held that “without the evidence of the substantial loss it is difficult to grant the stay orders as there is no reason why the Respondent should be kept away from its Judgment”. But in this Court’s view, there is need to guarantee the Applicant his right of appeal by ensuring the same is not rendered nugatory by exposing the subject matter to execution.

11. On the issue of security for the due performance, the Applicants have offered security by indicating that they are ready and willing to deposit half of the decretal sum in a joint interest earning account with the Respondent as security for due performance of the appeal. On considering the offer by the Applicant, the Court finds that the third consideration has been fulfilled.

12. The purpose of an application for stay of execution pending appeal was articulated in the case of RWW –vs- EKW [2019] eKLR, where the Court held that:-

“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. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.

13. In the upshot, the court appreciates that it would be in the interest of justice to allow the application and proceeds to allow the Notice of Motion application dated 12th January, 2024 on the following terms:-

- a. That there be stay of execution on condition that the Appellants deposit half of the decretal sum in a joint interest earning bank account in the names of both Counsel for the Applicants and the Respondent within thirty (30) days from the date of this ruling.
- b. The Appellant to file and serve a Record of Appeal within thirty (30) days from the date hereof.
- c. That in default of (a) above, the application shall stand dismissed and the Respondent shall be at liberty to execute.
- d. The Deputy Registrar to call and avail the original record of proceedings in Kiambu CMCC No.E275 of 2021, Penina Wangui Maina –vs- Bosire Ameya and Another pending the hearing and determination of this Appeal.
- e. The costs of the Application shall be in the cause.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 24TH DAY OF JUNE, 2025.

D. O. CHEPKWONY

JUDGE

In the presence of:

Mr. Kimanzi counsel for Applicants

Court Assistant - Martin

