



**Directline Assurance Company Limited v Chege (Civil Appeal
E046 of 2024) [2025] KEHC 9100 (KLR) (24 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9100 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
CIVIL APPEAL E046 OF 2024
LN MUTENDE, J
JUNE 24, 2025**

BETWEEN

DIRECTLINE ASSURANCE COMPANY LIMITED APPELLANT

AND

DANIEL KIMANI CHEGE RESPONDENT

RULING

1. The Applicant approached this court through a Notice of Motion dated 17th December, 2024, seeking the following orders;
 1. Spent.
 2. Spent.
 3. That pending the hearing and determination of this appeal, there be a stay of execution of the judgment, decree, execution order and all consequential orders arising from the judgment delivered on 22nd October, 2024, in //Nyahururu Chief Magistrate Court Civil Case No. 115 of 2022.//
 4. That costs of this application and other costs incurred herein abide the outcome of the appeal.
2. The application is premised on grounds that;
 - a. That the Applicant is aggrieved by the judgment of learned honourable E.H. Keago delivered on 22nd October, 2024, in Nyahururu Chief Magistrate Court Civil Case No. 115 of 2022 and have filed an appeal herein against the whole of the said judgment hence necessitating the application herein.
 - b. That the Respondent is in the process of extracting the decree which is of a substantial amount and therefore there is danger of imminent execution against the Appellant/Applicant's



properties which will result in the Appellant suffering undue substantial loss if stay of execution pending hearing and determination of this application and/or appeal is not granted.

- c. That the Applicant lodged an appeal against the judgment delivered on 22nd October, 2024, as they believe that they have a strong and meritorious appeal which has chances of success.
 - d. That the Applicant is willing to give security for the due performance of the judgment, decree and or order as she be directed by this honourable court pending the hearing and final determination of the appeal.
 - e. That the application has been made in good faith and is not a subversion of the administration of justice.
 - f. That it is in the interest of justice that there be a stay of execution of the judgment in *Nyabururu Chief Magistrate Court Civil Case No. 115 of 2022* and the Applicant be given a chance to be heard on the appeal.
 - g. That no loss, damage and/or prejudice will be suffered by the Respondent herein since the Applicants are agreeable to abide by the terms imposed on them by this honourable court pending the final and determination of the appeal.
 - h. That the court has inherent powers *ex debito justiciae* to order a stay of execution pending the hearing and determination of an application and/or appeal and that power can properly be invoked by Section 3A of the *Civil Procedure Rules*.
 - i. That the application has been made without unreasonable doubt.
 - j. That in the event that the appeal is successful the Respondent will most probably not be in a position to compensate the Applicant of the losses that may be incurred and/or the amounts worth of any moveable properties that may be impounded and sold to satisfy an execution order issued thereto as the Respondent is not a man of means.
3. In response the application is opposed through a replying affidavit deposed by the Respondent. It is deposed that during trial of the declaratory suit the Applicant admitted that they are obligated to pay a sum of 3 million but no cheque was forwarded to settle the amount but he has no objection to the same being paid as he in dire need of money.
 4. I have considered the application, affidavits in support and opposition; and rival arguments and authorities cited.
 5. The legal requirements for stay of execution of judgment pending appeal are set out in Order 42 Rule 6(1) and (2) of the *Civil Procedure Rules* which stipulate thus;
 - (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. Issues to be considered are;
 - i. Whether the application has been made without undue delay.
 - ii. Whether substantial loss shall be suffered if the order sought is not granted.
 - iii. Whether the Applicant is willing to provide security for due performance of the decree.
- 7. The initial issue I would like to determine is whether there was undue delay in bringing the application. The judgment was entered on 22nd October, 2024. The Applicant filed the appeal on 14th January, 2024, while the instant application was filed on 17th December, 2024. These were some 25 days after the judgment was entered. The delay cannot be dismissed as being inordinate.
- 8. On the issue of substantial loss, in *Wangalwa & Another v Agnes Naliaka Chesoto* (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.”
- 9. In *Kenya Shell Limited v Benjamin Karuga Kibiru & Another* (1986) eKLR the court held that;

“If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. 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. The Applicant argues that if execution proceeds their properties will be attached and if money is released to the Respondent the Appellant will suffer irreparable loss as the business will be crippled and the appeal will be negated. The Respondent on the other hand submits that he should not be dismissed as a man of straw hence should not be denied the fruits of the judgment.
- 11. On the question whether the appeal is arguable, the holding of the learned Magistrate regarding the provisions of Section 10(1) and Section 5(b) (iv) of Cap 405 the *Insurance (Motor Vehicle Third Party Risks) Act* is questioned such that they seek determination. The issue as to whether the Appellant or its insured having been a party in the primary suit is also questioned.
- 12. An insurance company would be obligated to fulfil its contractual obligations but when it is argued that the person masquerading as their insured was not the one, then it must be inquired into. What



I have not seen is the argument whether or not the statutory notice was served upon them. That notwithstanding it would be in the interest of justice that they be heard so that the court can determine whether or not they would be acting in good faith.

13. On the question whether or not the Respondent is a man of straw such that if the appeal is allowed money paid may not be released, the duty was upon the Respondent to demonstrate that he would be in a position to refund the decretal sum in case the appeal is allowed. In *Stanley Karanja Wainaina & Another v Riolon Ayangu Mutubwa* Nairobi HCCA No. 427 of 2015 it was stated that;

“It is not enough for the Respondent to merely swear that fact in an affidavit without going further to provide evidence of his liquidity. In my view the Respondent has evidential burden to show that he has the resources since this is a matter that is purely within his knowledge. The Court of Appeal while dealing with a similar situation in *National Industrial Credit Bank Limited -V- Aquinas Francis Wasike and Another (UR) C.A. 238/2005* stated:-

This Court has said before and it would bear repeating that while the legal duty is on an applicant to prove the allegation that an appeal would be rendered nugatory because a respondent would be unable to pay back the decretal sum, it is unreasonable to expect such an applicant to know in detail the resources owned by the respondent or lack of them. Once an applicant expresses that a respondent would be unable to pay back the decretal sum, the evidential burden must then shift to the respondent to show what resources he has since that is a matter which is peculiarly within his knowledge.”

It has not been authoritatively asserted that the Respondent may refund the funds if paid. What is averred is that he is in dire need of money to seek treatment, which is a suggestion that he lacks means of resources that are necessary for him to meet basic needs.

14. On the question of security, in *Gianfranco Manenthi & Another v Africa Merchant Co. Ltd* [2019] eKLR the court held;

“... the applicant must show and meet the condition of payment of security for due performance of the decree. Under this condition a party who seeks the right of appeal from money decree of the lower court for an order of stay must satisfy this condition on security. In this regard, the security for due performance of the decree under order 42 rule 6(1) of the *Civil Procedure Rules*, it is trite that the winner of litigation should not be denied the opportunity to execute the degree in order to enjoy the fruits of his judgment in case the appeal fails.”

15. On the question of security for due performance of the decree, the Applicant indicated that he is willing to give security for due performance of the judgment, decree pending the determination of the appeal. According to the proposal made by the Respondent, he seeks release of Kshs.3,000,000/- as admitted that in such a case they would be obligated to pay only Kshs.3,000,000/-. There is however the question of denying having insured the Respondent. The interest of justice would call for determination of the appeal as soon as it is practicably possible. For that reason, I order thus;

1. There be stay of execution of the judgment and decree in *Nyahururu Chief Magistrate's Civil Case No. 115 of 2022* pending hearing and determination of the appeal on condition that;
 - a. Applicant deposits half the decretal sum in court as security for due performance of the decree within 10 days of today, 24th June, 2025.



- b. The Applicant/Appellant to file and serve the Record of Appeal in the matter within 30 days of today.
- c. In default, the order for stay shall stand vacated.
- d. Costs of the application shall be in the cause.
- e. It is so ordered.

16. Mention on 30th September, 2025.

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

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L.N. MUTENDE

JUDGE

