



REPUBLIC OF KENYA



Houseman General Contractors Limited v Kibondori & 3 others (Civil Appeal E008 of 2024) [2025] KEHC 11457 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11457 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CIVIL APPEAL E008 OF 2024**

**TW OUYA, J
JULY 31, 2025**

BETWEEN

HOUSEMAN GENERAL CONTRACTORS LIMITED APPLICANT

AND

MALACK ONDIEKI KIBONDORI 1ST RESPONDENT

JOHN GITAU IRUNGU 2ND RESPONDENT

SUSAN WANGUI NJOYA 3RD RESPONDENT

CATHERINE WAMBUI KAMAU 4TH RESPONDENT

RULING

1. This ruling, is in respect to the applicant's Notice of Motion dated 9th September, 2024. Prayers I and III of the Motion are now spent, and what is now pending this court's determination are the following prayers:
 - i. That this honourable court be pleased to review the orders issued on 3rd April, 2024, requiring the applicant to deposit the decretal amount within 21 days as a condition for stay of execution;
 - ii. That this honourable court be pleased to allow the applicant deposit the log book to Motor Vehicle registration no. KBS 666A as security in place of the decretal amount, pending the hearing and determination of the appeal;
 - iii. That upon the deposit of the Motor Vehicle log book as ordered above, the applicant be granted stay of execution of the judgement and decree made on 31st January, 2024, and any consequential orders thereto, pending the hearing and determination of the appeal;
 - iv. That costs of this application be provided for.



2. The application is premised on the grounds stated on the face of the Motion, and in the deposition made in the supporting affidavit sworn by Mr. Evans Masanya Onyancha, a director of the applicant, on 9th September, 2024. In brief, Mr. Onyancha averred that on 3rd April, 2024, this court granted the applicant a conditional stay of execution, wherein the applicant was to deposit the decretal sum in a joint interest earning account in the names of the firms of advocates in court within 21 days from the date of the order. He alleged that the applicant is currently facing significant financial difficulties and has been unable to raise the required decretal amount in cash within the stipulated period.
3. He further alleged that despite exhaustive efforts, the applicant remains unable to secure the decretal amount in cash, as such the applicant seeks to deposit the logbook for motor vehicle registration KBS 666A with this court as an alternative form of security pending the hearing and determination of the appeal.
4. Mr. Onyancha averred that Motor Vehicle KBS 666A, which is registered in the name of Houseman Multi Services Limited, an affiliate of the applicant, whose change of name was effected in 2009 to Houseman General Contractors Limited; is worth Kshs. 1, 450,000, which is sufficient to cover as security, costs for the decretal sum. He alleged that he has pursued various avenues to secure funds, including seeking financial assistance from friends, family and financial institutions, but he has not been successful.
5. He contended that with the lapse of the 21 day period for depositing the decretal sum, the applicant faces an imminent risk of execution by the respondent, which poses severe and irreparable harm including the possible loss of property and livelihood; as such, it is in the interest of justice if the orders made on 3rd April, 2024, is reviewed, to allow the applicant deposit the log book as security instead of the decretal sum, as this will ensure that the applicant's right to appeal is preserved, without undue prejudice to the respondent.
6. The application was opposed vide a replying affidavit sworn on 4th November, 2024, by Malack Ondieki Kibondori, the 1st respondent on behalf of the 2nd, 3rd and 4th respondents. In the affidavit. Mr. Kibondori alleged that the applicant's application does not meet the threshold for grant of orders of review sought, as it has failed to demonstrate that there is an error apparent on the face of the record or sufficient reason to warrant a review of this court's orders issued on 3rd April, 2024.
7. He averred that the applicant filed the present application five (5) months after this court issued its orders, and it therefore had more than five months to comply with the court's orders or seek extension of the orders but the applicant has deliberately failed to comply with the said court orders in blatant disregard of the orders of this court.
8. Mr. Kibondori contended that the applicant has not offered any plausible explanation for non-compliance with this court's direction or the unreasonable delay in filing this application; and further, that the instant application is an afterthought, meant to frustrate the respondents from enjoying the fruits of their judgement. He alleged that Motor Vehicle registration no. KBS 666A, is not a suitable security for the decretal sum, as it is neither registered in the name of the applicant, nor has the applicant demonstrated by way of evidence, that it has the authority to transact on behalf of the registered owner.
9. He further alleged that the valuation report presented by the applicant is biased and cannot be deemed reliable for ascertaining the value of the subject vehicle or its adequacy in settling the decretal sum, as the respondents were not involved in the assessment process. He also alleged that there was no assurance that by the time the appeal will be heard and determined, the motor vehicle will be worth the same value as assessed in the valuation report, nor is there any guarantee of its continued existence, given that it remains under the control and use of the appellant; as such, the motor vehicle is unsuitable as



- security, in view of the numerous risks that may compromise its value or cause it irreparable damage thereby leaving the respondents with no security should the appeal be unsuccessful.
10. Mr. Kibondori contended that the use of a logbook as security, will greatly prejudice the respondents as it exposes them to the risk of being deprived of the fruits of their litigation in the instance the vehicle is damaged or its value is significantly diminished. The respondents urged this court to dismiss the present appeal with costs.
 11. The application was canvassed by way of written submissions. The applicant's written submissions were filed on its behalf by its learned counsel Muchemi & Co. Advocates, while those by the respondents were filed on their behalf by their learned counsel S. Matu Ngeru & Co. Advocates.
 12. In its written submissions, the applicant contended that its unforeseen financial constraint constitutes a new and important matter that was not within its knowledge at the time the original order was made; and that it has demonstrated due diligence in attempting to comply with the court's directive, aligning with the criteria set out in Order 45 rule 1 of the Civil Procedure rules.
 13. The applicant submitted that the proposed alternative security in the form of the motor vehicle log book ensures that the respondents' interests are safeguarded while also allowing the applicant to prosecute the appeal without undue hardship. The applicant further submitted that it is likely to suffer severe and irreparable consequences, including potential loss of valuable property and means of livelihood due to the imminent risk of execution by the respondents, should the decretal amount not be deposited.
 14. It was the applicant's submission that the issue of security is discretionary and upon the court to determine the same, however, it ought to be allowed to offer security as a sign of good faith and in the interest of justice, and that the security offered will not in any way cause the respondent to suffer any prejudice.
 15. The applicant contended that the registered owner of the motor vehicle KBS 666A, Houseman Multiservice Limited, is the same entity as the applicant company, given that the certificate of change of name adduced demonstrates that Houseman Multiservice Limited, changed its name to Houseman General Contracts limited, the applicant company.
 16. The applicant further contended that the respondents' allegations on biasness of the valuation report has not been proven in any way, and it is open for the respondent to contract an independent valuer to ascertain the value of the subject vehicle to ascertain its adequacy in settling the decretal sum.
 17. It was the applicant's submission that its proposal for the motor vehicle as a security is a sign of good faith and commitment to the conditions set out in the orders issued on 3rd April, 2024, as such, it is an adequate security.
 18. The respondents on the other hand submitted that the applicant has not offered any reason for the substitution of the order to deposit the entire decretal sum as security with a log book and the same ought to be dismissed. They further submitted that the allegation by the applicant of mere financial difficulty does not suffice as sufficient reasons to warrant substitution of decretal amount with a logbook as security, considering that the applicant has not demonstrated by way of evidence its inability to comply with the court's orders; and in the absence of such evidence, the applicant has failed to lay sufficient basis for review of the order issued on 3rd April, 2024.
 19. The respondents contended that the motor vehicle being proposed as security is registered under the name Houseman Multiservices Limited, and not the under the applicant's name, as such, the applicant cannot offer security of what he does not own. They further contended that the security guaranteed



- under Order 42 rule 6 is to guarantee due performance and the security proposed by the applicant cannot guarantee due performance should its appeal fail, as such, it cannot be termed as sufficient security.
20. The respondents submitted that there was laxity and inordinate delay on the part of the applicant in bringing the present application, considering that he was fully aware of the orders granted as well as his financial status, and he should have made the said application at the earliest opportunity to salvage the situation and not after the lapse of the conditional period.
 21. The respondents further submitted that the applicant has failed to explain the delay in making the present application as well as the inability to deposit the said sums within the specified period; and that the said application was made as an afterthought with the sole purpose of delaying justice for the respondents who cannot enjoy the fruits of their judgement.
 22. I have carefully considered the application, the replying affidavit in opposition thereto, together with the rival written submissions by the parties; having done so, I find that the main issue for determination is whether the applicant's application is merited.
 23. The first and main substantive prayer that the applicant is making in the present application is that this court should review the orders issued on 3rd April, 2024, requiring it to deposit the decretal amount within 21 days as a condition for stay, and allow it instead to deposit the log book for motor vehicle registration no. KBS 666A as security in place of the decretal amount pending the hearing and determination of its appeal.
 24. From the record of the court, this court on 3rd April, 2024, granted the applicant a conditional stay of execution order of the decree and judgement of the lower court on condition that the applicant deposits the total decretal sum in a joint interest earning account in the names of the firms of the parties' advocates within the next 21 days from the date of the order.
 25. The applicant was therefore required to deposit the said sum in a joint interest earning account in the names of the parties' advocates, on or about the 24th of April, 2024, which the applicant failed to do. Given that the said order for stay of execution was a conditional order, the said order lapsed after the applicant failed to deposit the decretal sum by the 24th of April, 2024, and there was therefore no order for stay of execution, after the lapse of the 21-day period, as the said order was spent when the applicant failed to deposit the said amount.
 26. The order for stay of execution, having lapsed, and the same having not been extended by an order of this court, the said order is spent and cannot be resurrected, as such, there is therefore no order in place that this court can review.
 27. In *Mukara & another versus Wairimu (Suing as the Administrator of the Estate of the Late Amos Irungu – Deceased)* (Civil Appeal E028 of 2022) [2023] KEHC 24173 (KLR) (Civ) (26 October 2023) (Ruling); the court, when faced with a similar application, held as follows: "The conditional stay orders having not been complied with and or extended by a court order have since lapsed and cannot be resuscitated to give life to the same."
 28. Similarly, the court in *Simba Coach Limited versus Kiriiyu Mercharnts Auctioneers* [2019] eKLR; stated thus: "Further it must be noted that the applicant herein seeks a review of orders that have been already been spent. These prayers cannot be granted as the orders were conditional and they have since lapsed. Granted these circumstances, even if the applicant had established a case for review, the application would still have failed since in my opinion, no useful purpose would be served by reviewing orders which are already spent."



29. Based on the above authorities, it is evident that this court cannot review the order dated 3rd April, 2024, as the same lapsed and is therefore non-existent. This prayer therefore fails.
30. That being said, the applicant in its application had also made a fresh prayer for an order of stay of execution of the judgement and decree of the lower court made on 31st January, 2024, and any consequential orders, pending the hearing and determination of its appeal. I have however noted that neither the applicant nor the respondents had submitted on this prayer. The respondents did not indicate in their replying affidavit or submissions whether they were opposed to the orders for stay of execution pending the hearing and determination of the applicant's appeal. I will however proceed to consider the same in the interest of justice.
31. The guiding law in an application of this nature, is found in Order 42 rule 6 of the Civil Procedure rules. Order 42 rule 6 (1) provides 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.”
32. The conditions to be fulfilled by an applicant seeking stay of execution orders pending an appeal, have been provided for under Order 42 rule 6 (2) 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.”
33. Regarding whether the applicant has met all the conditions required before an order of stay of execution can be made, this court had on the 3rd of April, 2024, granted the applicant a conditional stay of execution, I believe that this court considered and determined that the applicant had met all the conditions for granting of a stay of execution before granting it the said orders.
34. However, as regards security, the applicant has indicated that is was going through financial constraints and it would therefore not be in a position to deposit the entire decretal sum as security. The applicant had proposed that it deposits the log book of Motor Vehicle registration no. KBS 666A as security instead of the decretal total sum awarded to the respondent.
35. As to whether a log book is a suitable security for the decretal amount, the court in *Lochab Brothers Ltd versus Lilian Munabi Nganga & 2 Others* [2007] KEHC 2263 (KLR); stated thus:
- “...there is no guarantee that by the time the appeal will be heard and determined the vehicle will be worth the same money or it be there at all. The vehicle is still under the control and use of the applicant. Many things can happen to it before the appeal is heard. It can be



wasted and its value diminished or it can even be involved in an accident and be completely damaged. I am not saying that this is going to happen but it can happen. If that happens then there will be no security for the respondent to fall back on if the appeal is not successful. Deposit of motor vehicle log book is therefore not a satisfactory security.”

36. Additionally, the court in *Waweru versus Kabuga* (Civil Appeal E011 of 2022) [2022] KEHC 9966 (KLR) (8 July 2022) (Ruling); stated thus:

“The question is whether the deposit of the log book by itself is sufficient security? I do not think so, the motor vehicle upon being released to the applicant will be in the control of the applicant. Its usage and depreciation by the time the appeal is heard may mean that the respondent, in the event the appeal is dismissed, may not recover the fruits of his judgment hence, leading to other proceedings in court.”

37. Guided by the above authorities, I am of the view that the log book of Motor Vehicle registration no. KBS 666A would not be a satisfactory security. Furthermore, whereas the applicant has indicated that it was going through financial constraints, it has not adduced any evidence, in the form of financial records or a financial statement to prove this fact.

38. Aside from this, the applicant has adduced a valuation report showing that the value of the subject vehicle is Kshs.1,450,000, which is more than the decretal sum, and he cannot therefore claim that it is going through financial constraints as it can always sell the said vehicle and come up with the decretal amount.

39. From the foregoing I am of the view that the application for stay pending an appeal succeeds. The applicant shall however deposit the entire decretal sum in a joint interest earning account in the names of the firms of the advocates herein, within a period of thirty (30) days from the date of this ruling. In default the stay orders shall lapse and execution ensue.

40. As regards costs, whereas the instant application has partially succeeded the respondents should have the costs of this application.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 31ST JULY, 2025.

HON. T. W. Ouya

JUDGE

For Applicant/AppellantC Kyumu h/b Muchemi

For Respondent.....Wanjiru h/b Matu

Court Assistant.....Brian

