



**Ngao Credit Limited v Achiro & another (Civil Appeal  
E048 of 2025) [2025] KEHC 11222 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11222 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CIVIL APPEAL E048 OF 2025**

**DK KEMEL, J  
JULY 30, 2025**

**BETWEEN**

**NGAO CREDIT LIMITED ..... APPELLANT**

**AND**

**JACINTA AUMA ACHIRO ..... 1<sup>ST</sup> RESPONDENT**

**GINEY GM AUCTIONEERS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Appellant has filed an application dated 21/7/2025 seeking the following reliefs:
  - i. Spent.
  - ii. That pending the inter partes hearing of this application this Honourable court be pleased to issue a temporary injunction staying any further proceedings in Siaya MCCC E054/2025.
  - iii. That pending the hearing of the application, this Honourable Court be pleased to issue a temporary injunction staying the execution of the ruling and orders emanating from the ruling delivered on 19/7/2025 in Siaya MC No. E054/2025 and all consequential orders thereto.
  - iv. That pending the hearing and determination of the substantive appeal, this Honourable court be pleased to issue a temporary injunction staying the execution of the ruling and orders emanating from the ruling delivered on 18/7/2025 in Siaya MCCC No. E054 of 2025 and all consequential orders thereto.
  - v. That pending the hearing and determination of this appeal, this Honourable court be pleased to issue status quo orders.
  - vi. That the costs of the application be awarded to the Appellant/Applicant.



2. The application is supported by the grounds set out thereunder and the supporting affidavit of Anne Ayuma Anyanda the Appellant's branch manager sworn on even date. The Appellants gravamen is inter alia; that the 1<sup>st</sup> Respondent had borrowed a loan from it on 1/8/2024 and offered the suit motor vehicle as collateral and was to be making monthly repayment; that the 1<sup>st</sup> Respondent defaulted and thus the Appellant moved to repossess the suit motor vehicle; that the trial court fundamentally ignored the trite law principle that parties are bound by their pleadings; that the trial court went outside the rule and granted prayers that had not been sought; that the Appellant has been condemned unheard; that the trial court disregarded the Appellant's replying affidavit clearly indicating that the 1<sup>st</sup> Respondent had breached the binding agreement between her and the Appellant; that the trial court disregarded the Appellant's contention that courts should not allow debtors from paying their just debts; that the trial court disregarded the Appellant's contention that the 1<sup>st</sup> Respondent did not have a prima facie case and that any prejudice suffered would be compensated by an award of damages; that the 1<sup>st</sup> Respondent is a cunning character who is a flight risk and ought to have been granted an injunction by the trial court; that the trial court engaged in a frivolous expedition in order to aid the 1<sup>st</sup> Respondent; that the courts have no power to rewrite contracts between parties to make them fairer or more reasonable.
3. The 1<sup>st</sup> Respondent filed a replying affidavit sworn on 23/7/2025 wherein she averred inter alia; that the application is incompetent, frivolous and misconceived; that she has been making payments diligently and has not defaulted as alleged; that the Appellant is out to frustrate her yet she has been repaying the loan; that she cannot dispose the suit vehicle which is jointly registered in her name and the Appellant and hence the Appellant should not get worried; that the Appellant's application should be dismissed and that she be allowed to access the suit vehicle and continue paying the debt.
4. The application was canvassed by way of oral submissions.
5. Mr. Maina, learned counsel for the Appellant/Applicant, submitted inter alia; that an order for stay of proceeding in the lower court as well as stay for execution is merited in the circumstances; that the trial court granted orders that had not been sought by the 1<sup>st</sup> Respondent; that the Appellant was not given a fair trial under Article 50(2) of *the Constitution*; that the Appellant seeks for orders of stay of proceedings in the lower court pending determination of the appeal; that the Appellant has fulfilled the three conditions imposed by Order 42 Rule 6 of the Civil Procedure Rules; that the present application was lodged three days after the ruling; that the Appellant stands to suffer substantial loss if the orders are not granted as the 1<sup>st</sup> Respondent is a cunning individual who had earlier hidden the suit vehicle upon being served with a notice and that the Appellant had to use the police to trace it and further that the 1<sup>st</sup> Respondent is a person of straw and unlikely to reimburse the Appellant the sums owed in the event of success of the appeal; that as regards the issue of security, it was contented that the suit is not a money decree and hence the Appellant is willing to give an assurance or undertaking not to dispose of the suit vehicle but to keep it in safe custody and to be released to the 1<sup>st</sup> Respondent in the event of lack of success of the appeal.
6. M/s Otieno, learned counsel for the 1<sup>st</sup> Respondent, submitted inter alia; that the 1<sup>st</sup> Respondent relies on her replying affidavit in opposition to the application; that no loss will be suffered by the Appellant if the suit vehicle is released to the 1<sup>st</sup> Respondent as the same is in the joint names of the Appellant and 1<sup>st</sup> Respondent; that the suit vehicle will deteriorate and deny the 1<sup>st</sup> Respondent possession; that the 1<sup>st</sup> Respondent has been repaying the loan as per the statement; that the trial court only put the orders in a different language and further by the court's own discretion; that the 1<sup>st</sup> Respondent did not know the extent of the debt and hence the need for furnishing of statements; that the Appellant did not comply with the order to release the suit vehicle; that the suit vehicle be released to the 1<sup>st</sup> Respondent



to enable her use it in her business and be able to continue with the repayment; that there has been no delay in the loan repayment.

7. I have given due consideration to the Appellant's application, rival affidavits and the oral submissions. It is not in dispute that the Appellant and the 1<sup>st</sup> Respondent entered into a loan agreement on 1/8/2024 whereby the 1<sup>st</sup> Respondent received a sum of Kshs112,000/= and that the 1<sup>st</sup> Respondent offered her vehicle registration number KDC 371 E make Suzuki Alto. It is also not in dispute that the Appellant valued the same at Kshs 650,000/= and that it has since repossessed the same leading to the 1<sup>st</sup> Respondent moving to the lower court for redress and which led to the impugned ruling. It is also not in dispute that the 1<sup>st</sup> Respondent is also staking a claim onto the suit vehicle on the ground that she has been repaying the loan without default and was about to complete when the Appellant repossessed her vehicle. It is also not in dispute that the trial court is yet to conclude the matter. It is also not in dispute that the Appellant's appeal is yet to be determined. I find the issue for determination is whether the application has merit.
8. It is noted that the Appellant's application seeks for two main prayers namely stay of proceedings as well as stay of execution of decree in Siaya MCCC E054 of 2025 pending determination of the appeal.
9. As regards the aspect of stay of proceedings, the rule of thumb is that the same being a discretionary remedy, must be resorted to by parties sparingly since the same is a grave action which seriously interferes with the right of a litigant to conduct his or her litigation. In fact, the same amounts to hinderance in the access to justice under Article 48 of *the Constitution*. A party seeking for such a remedy must show sufficient reasons to warrant the same. Stay of proceedings has been described in Halsbury's Laws of England 4<sup>th</sup> Edition, Vol. 37 at Page 330 as:

“The stay of proceedings is a serious grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merit of his case and therefore courts general practice is that a stay of proceedings should not be imposed unless the proceedings ought not to be allowed to continue. The test is one of beyond reasonable doubt. This is a power which, it has been emphasized ought to be exercised sparingly and only in exceptional cases. It will be exercised where the proceedings are shown to be frivolous, or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the Plaintiff would not succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”

In the case of William Odhiambo Ramogi & 3 others v Attorney General & 3 Others [2021] eKLR a five Judge Bench laid down this principle for grant of stay of proceedings pending hearing and determination of an appeal as follows:

- i. There must be an appeal pending before the higher Court.
- ii. Where such stay is sought in the court hearing the case as opposed to the higher court to which the appeal has been filed and there is an express provision of the law allowing for such an application, the Applicant should explain why the stay has not been sought in the higher court. This is because due to the potential of an application for stay of proceedings to inordinately delay trial, there is a policy in favour of applications for stay being handled in the court to which an appeal has been preferred because such a court is familiar with its docket and is therefore in a position to calibrate any order it gives accordingly.



- iii. The Applicant must demonstrate that the appeal raises substantial question to be determined or is otherwise arguable.
- iv. The Applicant must demonstrate that the appeal would be rendered nugatory if the stay of proceedings is not granted.
- v. The Applicant must demonstrate that there are exceptional circumstances which make the stay of proceedings warranted as opposed to having all arising grievances taken up on a single appeal.
- vi. The Applicant must demonstrate that the application for stay was filed expeditiously and without delay.

Going by the foregoing authority and looking at the pleadings in the trial court, it is quite clear that the dispute is clear as day and night namely whether the 1<sup>st</sup> Respondent had defaulted in loan repayment and whether the 1<sup>st</sup> Respondent's claim that she has not been in default and finally whether the Appellant's action repossessing the suit vehicle was lawful. I find those issues can easily be resolved within the shortest time possible and that there is no need to stay those proceedings. I find the Appellant has not satisfied the court for an order of stay of proceedings. It is instructive that the Appellant has already filed its pleadings before the said court for determination. I find that the Appellant has not met the threshold for an order of stay of proceedings. In any event, the Appellant has also sought for stay of execution pending appeal and if granted then its concerns would have been taken care of.

10. As regards the aspect of stay of execution pending appeal, the same is provided for under Order 42 Rule 6 of the Civil Procedure Rules 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 such decree or order, and whether the application for stay shall have been granted or refused by the court of 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 it seem just and any persons aggrieved by an order of stay made by 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 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.”

11. As to whether the application has been filed without undue delay, it is noted that the impugned ruling was made on 18/7/2025 and that the Applicant lodged its Memorandum of Appeal simultaneously with the application on 21/7/2025. I find that the application was filed without unreasonable delay.
12. As regards the aspect of substantial loss, it is noted that the Appellant has maintained that it stands to suffer great prejudice and loss if the suit vehicle is restored to the 1<sup>st</sup> Respondent who is a flight risk



and who had hidden the same from its reach yet the loan is yet to be repaid and further that the 1<sup>st</sup> Respondent is a person of straw and would not refund the monies in the event of success of the appeal. In the case of *Tropical Commodities Suppliers Ltd & Other v. International Bank Ltd (in liquidation)* [2004] EA 331 Justice Ogola held thus:

“Substantial loss does not represent any particular mathematical formula. Rather, it is a qualitative concept. It refers to any loss, great or small, that is of real worth or value as distinguished from a loss without value or a loss that is merely nominal.

Again, in the case of *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] eKLR Gikonyo J held that an 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 since the issue of substantial loss is what has to be prevented by preserving the status quo as such loss would render the appeal nugatory.

It is noted that the Appellant already repossessed the suit vehicle and has initiated the process of sale in order to recover the loan arrears. If the said vehicle is seized from the Appellant, then there is a likelihood that it will suffer loss. The 1<sup>st</sup> Respondent in her replying affidavit did not depose to her ability to refund the monies in the event of success of the appeal. Hence, I find the Appellant has fulfilled this condition.

13. As regards the issue of security, the Appellant only proposed an undertaking not to dispose of the suit vehicle while claiming that it was not a money decree. However, the fact remains that the 1<sup>st</sup> Respondent was given an order in her favour and thus she is entitled to enjoy the fruits of such order or judgment and that in the event she is denied such a right, she stands to be prejudiced. This is notwithstanding the fact that the outcome of the appeal is yet to be determined while the matter before the lower court is also yet to be determined. Indeed, this court is yet to get to the merits or otherwise of the appeal. It is noted that the Appellant in its application and affidavit plus submissions of learned counsel had dwelt a great deal on the merits of the appeal yet this court is only concerned with interlocutory matters at the moment. I have deliberately avoided the invitation of counsel for the Appellant to address myself on the merits or otherwise of the appeal as the same is still premature.
14. The issue of deposit of security for the due performance of the decree is meant to take care of the interest of the successful litigant who is on the seat of judgment and also to enable an Appellant secure his/her appeal. The court should thus balance the interest of the parties. It is not in dispute that the Appellant has already repossessed the suit vehicle and is about to offer it for sale while on the other hand the 1<sup>st</sup> Respondent maintains that she had not defaulted in the loan repayment. The 1<sup>st</sup> Respondent has availed a copy of bank statement which is due for consideration by the trial court. The Appellant has faulted the trial court for ordering it to file its statement as well as going to mediation. All these issues are yet to be determined by the trial court. Even though the Appellant has proposed to offer an undertaking not to dispose of the suit vehicle as a form of security, it is noted that the 1<sup>st</sup> Respondent has maintained that she uses the vehicle to run her business at the Siaya Police Station Canteen and has staked claim thereto. I find that if the Appellant intends to continue to keep the vehicle, the 1<sup>st</sup> Respondent stands to suffer prejudice. As both parties lay claim to the suit vehicle, I find that an order that the Appellant deposits the sum of Kshs 650,000/= being the agreed value of the vehicle into court pending determination of the appeal will take care of the concerns of the parties. The Appellant appeared to suggest that the coast is clear and that it should proceed to sell the suit vehicle yet the 1<sup>st</sup> Respondent has maintained that she has not defaulted in the repayment of the loan and further has staked a claim onto the said vehicle. Hence, it is erroneous for the Appellant to start entertaining the notion that the vehicle is its property and for its taking. The Appellant must wait for the determination



of this appeal and the trial court matter should the appeal fail to succeed. As the Appellant has indicated that it is willing to offer security and to abide by conditions to be imposed, I find that it has fulfilled this condition.

15. In view of the foregoing observation, the Appellant's application dated 21/7/2025 is allowed in the following terms:
- a. A temporary order of injunction staying the execution of the ruling and orders emanating from the ruling delivered on 18/7/2025 in Siaya MCCC E054 of 2025 is hereby granted pending determination of the appeal on condition that the Appellant deposits into court the sum of Kshs650,000/= within ten (10) days from the date hereof failing which the stay shall lapse.
  - b. The Appellant or 1<sup>st</sup> Respondent while in possession of the suit motor vehicle Registration No. KDC 371 E Suzuki Alto at any given time is ordered not to dispose or transfer the same until the determination of the appeal.
  - c. The Appellant is directed to file and serve its record of appeal within ten (10) days.
  - d. Matter is fixed for mention on 19/8/2025 before the Deputy Registrar to confirm compliance and to fix date before this court for directions on disposal of the appeal.
  - e. The costs of the application shall abide in the appeal

Orders accordingly.

**DATED AND DELIVERED AT SIAYA THIS 30<sup>TH</sup> DAY OF JULY 2025.**

**D. KEMEI**

**JUDGE**

In the presence of:

Maina.....for Appellant/Applicant

M/s Otieno.....for 1<sup>st</sup> Respondent

N/A..... 2<sup>nd</sup> Respondent

Okumu.....Court Assistant

