



REPUBLIC OF KENYA



**KENYA LAW**  
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**Saroya & another v Eastadil International Limited (Civil Appeal  
E189 of 2025) [2025] KEHC 12177 (KLR) (Civ) (8 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12177 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E189 OF 2025**

**TW CHERERE, J**

**AUGUST 8, 2025**

**BETWEEN**

**MOHAMED ZESHAN SAROYA ..... 1<sup>ST</sup> APPELLANT**

**ZAN STEEL LIMITED ..... 2<sup>ND</sup> APPELLANT**

**AND**

**EASTADIL INTERNATIONAL LIMITED ..... RESPONDENT**

**RULING**

“The exercise of discretion to grant stay of execution is not a reward for non-compliance, but a measured intervention to preserve the subject matter of appeal, where the interests of justice so demand.”

1. The Appellants herein have moved the Court by way of a Notice of Motion dated 05<sup>th</sup> March 2025 brought pursuant to Order 22 Rule 22 and Order 42 Rule 6(1) and (2) of the Civil Procedure Rules, as well as Sections 1A, 1B and 3A of the *Civil Procedure Act*. The application seeks an order of stay of execution of the judgment delivered on 22<sup>nd</sup> January 2025 in Milimani MCCC No. E854 of 2023 pending the hearing and determination of this appeal.
2. The application is premised on the grounds set out on the face of the motion and is supported by an affidavit sworn on 05<sup>th</sup> March 2025 by the 1<sup>st</sup> Appellant, Mohamed Zeshan Saroya. He deposes that the learned trial magistrate erred both in law and in fact in holding the Appellants liable for a contractual obligation to which the 1st Appellant was not privy. It is averred that the appeal raises serious issues of law and has high chances of success. The Appellants further express willingness to comply with any conditions the Court may impose for the grant of stay.



3. In opposition, the Respondent filed a replying affidavit sworn on 08<sup>th</sup> April 2025 by its Managing Director, Beatrice Emily Gathoni Gitagia. She deposes that the application is merely intended to delay the Respondent from enjoying the fruits of a lawful judgment. She further contends that no sufficient cause has been demonstrated to warrant the grant of stay, that execution is already underway, and that the appeal does not raise any arguable grounds.

### **Issues for Determination**

4. Having considered the pleadings on record, the Court identifies the following issues for determination:
  1. Whether the threshold for an order of stay of execution pending appeal has been met
  2. Whether the appeal raises an arguable issue.

#### **1. Whether the threshold for an order of stay of execution pending appeal has been met**

5. The principles governing the grant of stay of execution pending appeal are well settled under Order 42 Rule 6(2) of the Civil Procedure Rules. An applicant must satisfy the Court that:
  - (a) Substantial loss may result unless the order is made;
  - (b) The application has been made without unreasonable delay;
  - (c) Security for the due performance of the decree has been given.
6. On the element of delay, the judgment was delivered on 22<sup>nd</sup> January 2025 and the present application was filed on 5th March 2025. In the Court’s view, this delay is not unreasonable or inordinate.
7. As the Court of Appeal held in *Kenya Shell Ltd v Kibiru & Another* [1986] KLR 410 [1986] KECA 94 (KLR)

“Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”
8. The Appellants have not placed any material evidence before the Court to show that they would suffer prejudice of such a magnitude as would render the appeal nugatory if execution proceeds.
9. That the provision of security is a mandatory requirement under Order 42 Rule 6(2)(b) was articulated in *Arun C. Sharma v Ashana Raikundalia t/a Raikundalia & Co. Advocates* [2014] eKLR, where the Court held that:

“The security needed under Order 42 guarantees the due performance of such decree or order as may ultimately be binding on the Applicant.
10. Appellants have merely stated a general willingness to comply with any conditions the Court may impose. They have not made any concrete offer of security. The requirement is not merely procedural but goes to the heart of judicial discretion under Order 42 Rule 6(2)(b) of the Civil Procedure Rules.

#### **2. Whether the appeal raises an arguable issue**

11. Notwithstanding the failure to strictly meet the requirements for stay of execution, the Court is mindful that it retains an equitable discretion to grant stay where justice so demands. The guiding principle is to strike a balance between the successful party’s right to enjoy the fruits of judgment and the appellant’s right to pursue an appeal without undue hardship.



12. In *Butt v Rent Restriction Tribunal* [1982] KLR 417, the Court of Appeal held:

“The Court has unfettered discretion to grant a stay of execution. The general principle is that a successful litigant is entitled to the fruits of judgment, but the Court may grant a stay for sufficient cause.”

13. Accordingly, this court has considered whether the appeal is arguable. The applicable standard is whether the appeal raises at least one bona fide ground worthy of judicial consideration. This principle was affirmed in *Stanley Kang’ethe Kinyanjui v Tony Ketter & 5 Others* [2013] eKLR:

“An arguable appeal is not one which must necessarily succeed, but one which ought to be argued fully before the court; one which is not frivolous.”

14. The 1<sup>st</sup> Appellant contends that she was not a party to the contract that formed the basis of the claim, yet the trial court held her jointly liable. This raises a legal issue on privity of contract, which is fundamental to the law of contract.

### **Disposition**

15. In light of the foregoing, the Court is satisfied that the appeal raises an arguable issue, and that although the Appellants have not demonstrated substantial loss or offered security, the interests of justice require that the appeal be preserved. A conditional stay is therefore appropriate.

16. Accordingly, the Court makes the following orders:

1. There shall be a stay of execution of the judgment delivered on 22<sup>nd</sup> January 2025 in Milimani MCCC No. E854 of 2023 pending the hearing and determination of the appeal;
2. The Appellants shall deposit the full decretal sum into court as security for due performance of the decree;
3. In default of compliance with Order (2) above, the stay granted herein shall lapse automatically without further reference to the Court;
4. Costs of this application shall abide the outcome of the appeal.
5. This matter shall be mentioned before the Deputy Registrar on 05<sup>th</sup> June 2025 to confirm the filing of the record of appeal

**DELIVERED AT NAIROBI THIS 08<sup>th</sup> DAY OF May, 2025**

**WAMAE.T. W. CHERERE**

**JUDGE**

Appearances

Court Assistant - Nyambala

For Appellants - Ms. Kyalo for Waruiru, Karuku & Mwangale Advocates

For Respondent - Ms. Wangare for Gachie Mwanza & Co. Advocates

