



**Prigal Limited & another v Kenya Electricity Transmission Company Ltd & another
(Environment & Land Petition 4 of 2021) [2023] KEELC 593 (KLR) (10 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 593 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND PETITION 4 OF 2021
A OMBWAYO, J
FEBRUARY 10, 2023**

BETWEEN

PRIGAL LIMITED 1ST PETITIONER

MICHAEL MWANGI MUTURI 2ND PETITIONER

AND

KENYA ELECTRICITY TRANSMISSION COMPANY LTD RESPONDENT

AND

**ENG. ANTHONY WAMUKOTA-AG. MANANING DIRECTOR KENYA
ELECTRICITY TRANSMISSION COMPANY LIMITED CONTEMNOR**

RULING

1. The applicant contemnor, Engineer Anthony Wamukota acting Managing Director KETRACO has come to court praying that pending the hearing and determination of the intended Appeal, there be a stay of execution of the orders issued on January 19, 2023. That this honorable Court do issue such other and further orders as it deems just and expedient in the circumstances.
2. The application is based on grounds that orders were issued for attachment of the respondent's properties and simultaneously that a warrant do issue for the arrest and committal to Civil jail of the contemnor.
3. The Respondent and the contemnor have proffered an appeal against the said order and a Notice of Appeal accordingly lodged in that regard.
4. There is imminent danger that the Petitioners' will apply to execute the said orders thereby rendering this application moot.



5. The Contemnor will suffer irreparable loss by way of loss of liberty by imprisonment should he be arrested and jailed.
6. The intended Appeal will be rendered nugatory in the event the same succeeds.
7. The application is supported with the affidavit of the applicant where he reiterates the grounds. The application is brought under Order 42 rule 6 of the [Civil Procedure Rules 2010](#). The application is opposed by the petitioner.
8. The applicable law in such applications is Order 42 Rule 6 of the [Civil Procedure Rules](#) which stipulates:-

“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 orders set aside.

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 1st 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.
9. I am persuaded to follow the jurisprudence in [Kenya Commercial Bank Ltd v Sun City Properties Ltd & 5 Others](#) [2012] eKLR where it was held:

“In an application for stay, there are always two competing interest that must be considered. These are that a successful litigant should not be denied the fruits of his judgment and that an unsuccessful litigant exercising his undoubted right of appeal should be safeguarded from his appeal being rendered nugatory. These two competing interests should always be balanced.

10. I have considered the affidavit on record, submissions of counsel and do find that the application for stay pending appeal has been made timeously. Moreover, this court is satisfied that there is a likelihood of substantial loss if the orders issued by the court are executed but the applicant succeeds on appeal, however the petitioner should also enjoy the fruits of the consent judgment. The consent judgment has not been set aside and there is no indication that any party intends to set it aside and therefore this court grants a stay of execution pending appeal on conditions that the appellant deposits in this court security of the value of the decretal sum and in the alternative to pay half of the decretal sum. No orders as to the costs.
11. Ruling dated, signed and delivered virtually at Nakuru his 10th day of February 2023

A O OMBWAYO
JUDGE

