



Maundu v Granada Energy Limited (Environment & Planning Appeal E004 of 2024) [2025] KEELC 2878 (KLR) (26 March 2025) (Ruling)

Neutral citation: [2025] KEELC 2878 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & PLANNING APPEAL E004 OF 2024**

NA MATHEKA, J

MARCH 26, 2025

BETWEEN

FELISTA KANINI MAUNDU APPLICANT

AND

GRANADA ENERGY LIMITED RESPONDENT

RULING

1. The application is dated 26th September 2024 and is brought under Order 10 Rule 11, Order 22 Rules 22 and 25, Order 51 Rules 1 and 3 of the [Civil Procedure Rules](#); Sections 3, 3A and 80 of the [Civil Procedure Act](#) seeking the following orders;
 1. That this Application be certified urgent as the same is one of extreme urgency and requiring that service thereof be dispensed with ex parte in the first instance.
 2. That pending the hearing and determination of the instant Application, the Honourable Court be pleased to grant an Interim Order of Stay of proceedings in the case known as Machakos BPRT No. E002 of 2024 (Granada Energy Ltd -vs- Felista Kanini).
 3. That pending the hearing and determination of the instant Applicant/Appellant's Appeal, this Honourable Court is pleased to issue an order directing the Honourable Tribunal in the Machakos BPRT No. E002 of 2024 (Granada Energy Ltd -vs Felista Kanini) staying proceedings for direction and/or orders.
 4. That this Honourable Court be pleased to direct that the orders issued by the Honourable Tribunal on the 27th August, 2024 be and are hereby stayed, suspended and/or set-aside pending the hearing and determination of the instant Appeal by the Applicant/Appellant.
 5. Consequent to prayer (4) above being granted, the Ruling delivered by the Honourable Tribunal in the Machakos BPRT No. E002 of 2024 (Granada Energy Ltd -vs- Felista Kanini)



on the 27th August, 2024 and the consequential orders issued thereto be reviewed, suspended, stayed, varied and/or set aside.

6. That the Applicant/Appellant herein be granted an opportunity through its Advocate on record, to be heard and submit before this Honourable Court.
 7. That the Honourable Court be pleased to grant such further and/or other orders be made as the court may deem fit and expedient.
 8. That costs of this Application be provided for.
2. It is supported by the Affidavit of Felista Kanini Maundu and the grounds that the Respondent filed the Machakos BPRT No. E002 of 2024 and ex parte Orders thereto given and which court orders the Respondent is keen to execute even when the Applicant/Appellant raised an issue by way of Preliminary Objection and Grounds of Opposition on jurisdictions the Honourable Tribunal went ahead to unlawfully extend the initially issued ex parte Orders and ultimately on the 27th August, 2024 closed the case. That the Honourable Tribunal abused the law by ignoring the Applicant/Appellant's objection raised on a point of law and thereupon to the prejudice of the best interest of justice and the Applicant/Appellant is seeking through its Advocate on record that execution of the Orders issued by the Honourable Tribunal on the 27th August, 2024 be stayed, suspended and/or set-aside pending the hearing and determination of the instant Appeal by the Applicant/Appellant.
 3. That the Applicant/Appellant shall suffer irreparable loss and damage in the event that this Honourable Court does not certify this Application urgent as the Respondent has threatened to proceed to executing the Orders obtained on the 27th August, 2024 and the purpose of the Appeal herein shall be defeated. That it is in the best interest of justice that the Applicant/Appellant's Application is certified urgent and placed before a Judge and be heard immediately and/or on priority. That this Application is brought in good faith.
 4. This court has considered the application and the submissions therein. The principles for granting stay of execution are provided for under Order 42 rule 6 (1) of the [Civil Procedure Rules](#) as follows;

“No appeal or a 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 an application being made, to consider such application and to make such orders thereon as may to it seem just, 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 the orders set aside.”
 5. Order 42, rule 6 states:

“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.”



6. The Appellants need to satisfy the Court on the following conditions before they can be granted the stay orders:
 1. Substantial loss may result to the applicant unless the order is made.
 2. The application has been made without unreasonable delay, and
 3. Such security as the Court orders for the due performance of the decree or order as may ultimately be binding on the applicant has been given by the applicant.

7. The principles governing the exercise of the court’s jurisdiction are now well settled. Firstly, the intended appeal should not be frivolous or put another way, the applicant must show that they have an arguable appeal and second, this Court should ensure that the appeal, if successful, should not be rendered nugatory. These principles were well stated in the case of *Reliance Bank Ltd (In Liquidation) vs Norlake Investments Ltd* – Civil Appl. No. Nai. 93/02 (UR), thus;

“Hitherto, this Court has consistently maintained that for an application under rule 5(2) (b) to succeed, the applicant must satisfy the court on two matters, namely:-

1. That the appeal or intended appeal is an arguable one, that is, that it is not a frivolous appeal,
2. That if an order of stay or injunction, as the case may be, is not granted, the appeal, or the intended appeal, were it to succeed, would have been rendered nugatory by the refusal to grant the stay or the injunction.”

8. The question of stay pending appeal has been canvassed at length in various authorities, such as in the Court of Appeal decision in *Chris Munga N. Bichange vs Richard Nyagaka Tongi & 2 Others* eKLR where the Learned Judges stated the principles to be applied in considering an application for stay of execution as thus;

“..... The law as regards applications for stay of execution, stay of proceedings or injunction is now well settled. The applicant who would succeed upon such an application must persuade the court on two limbs, which are first, that his appeal or intended appeal is arguable, that is to say it is not frivolous. Secondly, that if the application is not granted, the success of the appeal, were it to succeed, would be rendered nugatory. These two limbs must both be demonstrated and it would not be enough that only one is demonstrated.....”

9. In the case of *Mohamed Salim T/A Choice Butchery vs Nasserpuria Memon Jamat* (2013) eKLR, the court stated that;

“That right of appeal must be balanced against an equally weighty right, that of the plaintiff to enjoy the fruits of the judgment delivered in his favour. There must be a just cause for depriving the plaintiff of that right

10. We are further guided by the court’s decision in *Carter & Sons Ltd vs Deposit Protection Fund Board & 2 Others* Civil Appeal No. 291 of 1997, at Page 4 as follows:

“... the mere fact that there are strong grounds of appeal would not, in itself, justify an order for stay. . . the applicant must establish a sufficient cause; secondly the court must be satisfied that substantial loss would ensue from a refusal to grant a stay; and thirdly the applicant



must furnish security, and the application must, of course, be made without unreasonable delay.”

11. The Respondent stated that they filed a reference to the Tribunal dated 27th May 2024 and an application also dated 27th May 2024 for consideration. They obtained *ex parte* orders on the 28th May 2024 restraining the Appellant from evicting, harassing, intimidating or threatening them from occupying the suit premises plot No. 27 Old Town Mavoko. The Appellant violated the order and evicted the Respondent. The Respondent filed the contempt application on the 7th July 2024 seeking the Appellant purge the contempt and pay for the damages incurred by the Respondent. The Tribunal’s ruling dated 27th August 2024 was delivered after both parties submitted and it was not *ex parte*. That the tribunal further granted 30 days stay of execution of that ruling and this application was only filed after the expiry of the same. The Respondent argued that the Appellants filed an application for review of that ruling at the tribunal and a stay was granted by an order of the tribunal dated 25th September 2025.
12. I find that indeed the Tribunal granted temporary stay of the ruling dated 27th August 2024 due to the Appellants application to review the said ruling (HA-03 is a copy of the said order). I find no need for a second injunction to be issued. Further, I am not persuaded that if the application is not granted, the success of the Appeal, were it to succeed, would be rendered nugatory. I find that the Applicant has not fulfilled the above grounds mentioned to enable me grant the stay. I find that the application is unmerited and I dismiss it with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 26TH DAY OF MARCH 2025.

N.A. MATHEKA

JUDGE

