



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kenya Alliance Insurance Company Limited v Olendi t/a Olendi & Company Advocates  
(Civil Appeal E124 of 2024) [2025] KEHC 3547 (KLR) (21 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3547 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
CIVIL APPEAL E124 OF 2024  
M THANDE, J  
MARCH 21, 2025**

**BETWEEN**

**KENYA ALLIANCE INSURANCE COMPANY LIMITED ..... APPELLANT**

**AND**

**PETER DAVID OLENDI T/A OLENDI & COMPANY  
ADVOCATES ..... RESPONDENT**

**RULING**

1. By a Notice of Motion dated 7.10.24, the Appellant seeks stay of execution, pending appeal, of the judgement delivered in favour of the Respondent, on 24.9.24 in Kilifi PMCC No. 116 of 2023. The Application is supported by the grounds on its face and in the supporting affidavit of Mercy Maweu, a legal officer of the Appellant, sworn on even date.
2. The Respondent opposed the application vide replying affidavits sworn on 13.11.24 and 23.11.24 by Peter David Olendi.
3. The Appellant is aggrieved by the judgement of the trial court and has already filed an appeal against the said decision. The Appellant is apprehensive that the Respondent shall commence execution of the judgment; that the Appeal will be rendered nugatory if the stay sought is not granted; that the Appeal has appreciable chances of success; that the Appellant has moved the Court timeously and without delay; that the Appellant is willing to comply with such conditions as the Court may impose.
4. The Respondent's reply is that Mercy Maweu, the deponent of the affidavit in support of the Application has not produced any evidence to confirm that she has the authority of the Appellant to swear the same; that the Appellant should be ordered to pay in addition to the judgment sum, the amount of Kshs. 200,000/= as costs and interest as ordered by the lower court; that the Appellant has never published an apology to the Respondent as ordered by the lower court; that the Appellant has demonstrated that it will not remedy its wrong of defaming the Respondent unless ordered by the



court; that the appeal is devoid of merit and is calculated to deny him the fruits of his judgment; that if the Court grants the stay sought then the Appellant should deposit in to Court the entire decretal sum of Kshs. 3,941,000/=.

5. The jurisdiction of the Court to grant stay of execution is set out in Order 42 Rule 6 of the Civil Procedure Rules. Sub-rule 2 provides:
  - (2) No order for stay of execution shall be made under subrule (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 order for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
6. The record shows that Githinji, J. who had earlier handled the matter, did on 18.11.24 note that the decretal sum had been deposited in Court, albeit late. He then stated that it was only fair that the said amount be deemed as duly deposited in compliance with the condition imposed for stay of execution.
7. The Court notes from his averments, that the Respondent is not opposed to the stay being granted on condition that the decretal sum is deposited in Court. This has been done, thus paving the way for the hearing and determination of the appeal. The justice of the case requires that the appeal be disposed of expeditiously.
8. The memorandum of appeal herein was filed on 30.9.24, over 4 months ago. That is enough time to have had the proceedings typed. I accordingly direct that stay of execution pending appeal granted by this Court remains in force on terms that the record of appeal shall be filed and served by 7.3.25. In default, the stay granted shall lapse. The costs of this application shall abide the outcome of the appeal.

**DATED, SIGNED AND DELIVERED IN MALINDI THIS 21<sup>ST</sup> DAY OF FEBRUARY 2025**

**M. THANDE**

**JUDGE**

