



**Chege & another v Mahugu (Civil Appeal E033 of 2025)  
[2025] KEHC 6051 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 6051 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL APPEAL E033 OF 2025  
TW CHERERE, J  
APRIL 8, 2025**

**BETWEEN**

**AGNES MUGURU CHEGE ..... 1<sup>ST</sup> APPELLANT**

**LAWRENCE MURIITHI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**JOHN GAKUHA MAHUGU ..... RESPONDENT**

**RULING**

1. The Appellants brought the Notice of Motion dated 14<sup>th</sup> January 2025 under Order 42 Rule 6 of the Civil Procedure Rules, seeking a stay of execution of the judgment delivered on 20th December 2024 in Milimani CMCC No. E1332 of 2023, pending the hearing and determination of this appeal. They also propose to provide security for the due performance of the decree.
2. The judgment appealed from condemned the Appellants to pay the Respondent KES 508,050/- plus costs and interest. The Appellants are aggrieved and have lodged this appeal.
3. The application is supported by an affidavit sworn by the 1<sup>st</sup> Appellant, and it is grounded on, inter alia, the averments that:
  1. The appeal is arguable and raises serious questions of law and fact.
  2. If stay is not granted, the appeal may be rendered nugatory.
  3. The Respondent might be unable to refund the decretal sum if the appeal succeeds.
  4. The Appellants are willing to deposit security as the court may direct.
4. The application was duly served upon the Respondent, who neither filed a response nor attended court. The depositions by the Appellants, including the claim that the Respondent may be unable to refund the decretal amount, therefore remain uncontroverted.



5. Under Order 42 Rule 6(2) of the Civil Procedure Rules, an applicant must demonstrate that:
  1. Substantial loss may result unless the order is made;
  2. The application has been made without unreasonable delay;
  3. Such security as the court orders for the due performance of the decree has been offered.
6. The court finds that the application was made timeously and that the Appellants' concern about the risk of non-refund by the Respondent is not rebutted.
7. It is settled law that where the ability of the Respondent to refund is in doubt and uncontroverted, substantial loss is likely to result. (See National Industrial Credit Bank Ltd v Aquinas Francis Wasike & Another [2006] eKLR and Kenya Hotel Properties Ltd v Willesden Investments Ltd [2001] eKLR).
8. The Appellants have further shown willingness to furnish security, a key consideration under the Rules. In Absalom Dova v Tarbo Transporters [2013] eKLR, the court emphasized that security must be realistic and enforceable.
9. In the absence of opposition, and balancing the interests of both parties, the court finds merit in the application. However, in line with the requirement for security and to safeguard the Respondent's interest, the stay will be conditional.
10. Accordingly, the application dated 14<sup>th</sup> January 2025 is hereby allowed on the following terms:
  1. There shall be a stay of execution of the judgment in Milimani CMCC No. E1332 of 2023 pending the hearing and determination of the appeal.
  2. The Appellants shall deposit the entire decretal sum of KES 508,050 in court within thirty (30) days from the date hereof as security.
  3. In default of compliance, the stay shall lapse automatically without further reference to this court.
  4. Mention before the Deputy Registrar on 29<sup>th</sup> May 2025 to confirm the filing and service of the record of appeal

**DELIVERED AT NAIROBI THIS 08<sup>TH</sup> DAY OF APRIL 2025**

**WAMAE.T. W. CHERERE**

**JUDGE**

Appearances

Court Assistant - Ubah

For Applicant - Ms. Ndisya for Kimondo Gachoka & Co. Advocates

For Respondent - Mr. Oreng for S.W.Oreng & Co. Advocates

