



**Oranja v Mutie (Civil Appeal E1368 of 2024) [2025] KEHC 6109 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 6109 (KLR)

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

**CIVIL APPEAL E1368 OF 2024**

**TW CHERERE, J**

**APRIL 3, 2025**

**BETWEEN**

**MOSES ORANJA ..... APPELLANT**

**AND**

**STEPHEN MBALUKA MUTIE ..... RESPONDENT**

**RULING**

**Background**

1. The Appellant moved this Court by a Notice of Motion dated 22<sup>nd</sup> November 2024 seeking an order of stay of execution of the judgment delivered on 31st October 2024 in Milimani MCCC No. E083 of 2023, pending the hearing and determination of the appeal.
2. The application is expressed to be brought under Article 50(1) of *the Constitution*, Sections 1A, 1B, 3A and 80(a) of the *Civil Procedure Act*, and Order 45 Rule 1 and Order 51 of the Civil Procedure Rules.
3. By an interim order issued on 29<sup>th</sup> November 2024, the Court granted conditional stay upon the Appellant depositing KES. 1,000,000/-, later reviewed to KES. 700,000/- on 06<sup>th</sup> December 2024. The Appellant complied and deposited the sum on 25<sup>th</sup> January 2025.
4. The Appellant asserts that:
  1. He is dissatisfied with the judgment and has filed an appeal.
  2. He stands to suffer loss if execution is carried out.
  3. The appeal will be rendered nugatory if stay is not granted
5. The Respondent opposed the application through a replying affidavit dated 05<sup>th</sup> February 2025, noting that:
  - 1 The judgment is for KES. 2,000,000/-, a liquidated amount;



2. He operates Villa Park Club in Nairobi and is financially capable of refunding the decretal amount should the appeal succeed;
  3. The Appellant has not demonstrated any special or exceptional circumstances warranting stay.
6. I have considered the application and the key issue for determination under Order 42 Rule 6(2) of the Civil Procedure Rules is whether the Appellant has demonstrated that he will suffer substantial loss unless stay is granted.

### **Analysis and Determination**

7. It is trite law that the mere fact that a decree-holder may proceed with execution of a money decree does not in itself amount to substantial loss.
8. In *Kenya Shell Ltd v Benjamin Karuga Kibiru & Another* [1986] eKLR, the Court of Appeal stated:

“It is not sufficient by merely stating that the sum of money is substantial and that the respondent is unlikely to be able to pay back... It is upon the applicant to prove that the respondent will not be able to refund the money. Where the applicant does not give such evidence, stay will not be granted.”
9. Further, in *National Industrial Credit Bank Ltd v Aquinas Francis Wasike & Another* [2006] eKLR, the Court emphasized:

“The onus is on the applicant to prove that the respondent cannot repay the decretal sum if the appeal succeeds. It is not enough to merely state so.”
10. In this case, the Appellant has not discharged this burden. On the contrary, he has not disputed the Respondent’s financial ability to refund the decretal sum, which the Respondent has clearly asserted and substantiated by indicating he runs a commercial establishment.
11. This being a money decree, courts are generally reluctant to grant stay unless there is demonstrated risk that the Respondent is a person of straw. No such evidence has been presented. As such, the application fails on the most critical limb of proof of substantial loss.
12. Although the application was brought without delay and the Appellant deposited the security as ordered, those two factors alone cannot override the failure to meet the threshold on substantial loss.
13. Consequently, I find that failure to demonstrate substantial loss, which is a mandatory requirement under Order 42 Rule 6(2)(a) renders the application dated 22<sup>nd</sup> November 2024 untenable.
14. In the end, I make the following orders:
  1. The notice of motion dated 22<sup>nd</sup> November 2024 is dismissed with costs to the Respondent.
  2. The notice of motion dated 11<sup>th</sup> December 2024 is overtaken by events
  3. Mention on 08<sup>th</sup> May 2025 before the Deputy Registrar to confirm the filing of the record of appeal

**DELIVERED AT NAIROBI THIS 03<sup>RD</sup> DAY OF APRIL 2025**

**WAMAE.T. W. CHERERE**

**JUDGE**



Appearances

Court Assistant - Ubah

For Appellant – Mr. Odhiambo for Wesonga, Wamalwa & Kariuki Associates Advocates

For Respondent - Ms. Mugo for Sheila Mugo & Co. Advocates

