



REPUBLIC OF KENYA



**Directline Assurance Co Ltd v Gathuri (Civil Appeal E251 of 2025)
[2025] KEHC 12178 (KLR) (Civ) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 12178 (KLR)

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

**CIVIL
CIVIL APPEAL E251 OF 2025**

TW CHERERE, J

MAY 22, 2025

BETWEEN

DIRECTLINE ASSURANCE CO LTD APPELLANT

AND

JOHN GATHURI RESPONDENT

RULING

An application for stay of execution pending appeal invokes the discretionary jurisdiction of the Court, which must be exercised judiciously and within the confines of the law.

1. By notice of motion dated 23rd April 2025 premised on Section 1A, 1B, 3A, 63(e), 65(10 B, 79G and 95 of the [Civil Procedure Act](#) and Order 42 rule 6 of the Civil Procedure Rules, the applicant prays for orders for:
 1. Stay of execution of the judgment delivered on 20th February 2025 in MCCC E4257 of 2020 pending the hearing and determination of this appeal
 2. Costs be in the cause
2. The application is supported by an affidavit sworn on 23rd April 2025 by Kevin Ngure, the Appellant's Deputy Claims Manager and on the grounds that:
 1. The Appellant is aggrieved by the judgment
 2. Appellant faces imminent execution which will occasion Appellant substantial loss
 3. Appellant is willing to give security



4. Respondent may not be in a position to refund the decretal sum in the event the appeal succeeds
3. The Respondent, though served on 29th April 2025, neither filed any response nor attended court.

Issues for Determination

4. I have considered the application and the only issue that arise for determination is whether the Appellant has met the threshold for stay of execution under Order 42 Rule 6 of the [Civil Procedure Rules](#).
5. There are three cumulative conditions for obtaining a stay of execution pending appeal under Order 42 Rule 6(2) of the [Civil Procedure Rules](#). These requirements are designed to balance the competing interests of an appellant seeking to preserve the subject matter of the appeal, and a successful litigant entitled to the fruits of their judgment.
6. Firstly, the Appellant must prove that they will suffer irreparable or significant harm if the stay is not granted, making the appeal pointless or academic. Secondly, the application must be filed promptly to avoid prejudicing the successful party or abusing the court process and thirdly, the Appellant must provide security as ordered by the court to protect the respondent from any loss due to the delay in executing the judgment.
7. These principles have been consistently affirmed by the superior courts, including the Court of Appeal in [Kenya Shell Ltd v Benjamin Karuga Kibiru](#) [1986] KLR 410 and [Equity Bank Ltd v Taiga Adams Company Ltd](#) [2006] eKLR, where the court emphasized that failure to satisfy any of the three conditions disentitles an applicant from relief under this provision.
8. The impugned judgment was delivered on 20th February 2025 and this application was filed on 23rd April 2025, approximately two months thereafter. The delay though unexplained is not inordinate and has not been shown to have occasioned any prejudice to the Respondent. The Court is therefore satisfied that the application was brought timeously within the meaning of Order 42 Rule 6(2)(b) of the [Civil Procedure Rules](#).
9. Judicial precedents underscore that a claim of substantial loss must be precise and supported by credible evidence, rather than resting on vague or speculative assertions. This principle is well-articulated in [Machira t/a Machira & Co Advocates v East African Standard](#) [2002] eKLR and [James Wangalwa & Another v Agnes Naliaka Cheseto](#) [2012] eKLR, where the courts emphasized the necessity of demonstrating, with particularity, the nature of the loss likely to be suffered.
10. However, the law equally recognizes that where an Applicant raises a reasonable apprehension regarding the respondent's ability to refund the decretal amount, the evidentiary burden shifts to the Respondent to rebut that apprehension. This position is established in [ABN Amro Bank N.V. v Le Monde Foods Limited](#), Civil Application No. 15 of 2002 (NRB) and [National Industrial Credit Bank Ltd v Aquinas Francis Wasike & Another](#) [2006] eKLR.
11. The Appellant avers that the Respondent may not be in a financial position to refund the decretal sum in the event the appeal succeeds.
12. The Court of Appeal, in [National Industrial Credit Bank Ltd v Aquinas Francis Wasike & Another](#) [2006] eKLR, emphasized the shifting burden of proof in such circumstances, stating:

“ This Court has said before and it will say it again that while the legal duty is on the Appellant to prove that the Respondent will not be able to repay the decretal sum, the burden shifts



to the Respondent to show that he would be in a position to refund the decretal sum if the appeal succeeds and the sum is paid out to him before the appeal is heard."

13. Similarly, in *Jennifer Nyambura Kamau v Humphrey Mbaka Nandi* [2013] eKLR, the Court held:

"The evidential burden shifts to the person against whom it is raised to rebut the same; if they do not, judgment shall be entered on the strength of the uncontroverted evidence."

14. In the present case, the Respondent, who, despite service, neither filed a response nor appeared in court to contest the application, has not rebutted the Appellant's contention of his inability to refund the decretal sum in the event the appeal succeeds. I am therefore satisfied that the Appellant has established the likelihood of suffering substantial loss should a stay of execution not be granted.

15. Appellant has indicated its willingness to provide security for due performance of the decree. Security protects the interests of the decree-holder during the pendency of the appeal and to strike a fair balance between the parties. The law requires that the security offered must be sufficient to guarantee the satisfaction of the decree should the appeal fail. (See *Equity Bank Ltd v Taiga Adams Company Ltd* [2006] eKLR).

16. From the foregoing, this court is satisfied that a conditional stay is warranted to safeguard the rights of both parties.

17. Accordingly, notice of motion dated 23rd April 2025 is allowed on the following terms:

1. There shall be stay of execution of the judgment delivered on 20th February 2025 in MCCC E4257 of 2020 pending the hearing and determination of this appeal on condition that the Appellant, shall deposit the entire decretal with the court
2. Mention before the Deputy Registrar on 01st July 2025 to confirm the filing and service of the record of appeal
3. Costs of this application shall abide the outcome of the appeal.

DELIVERED AT NAIROBI THIS 22ND DAY OF MAY 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Ruth

For Appellant - Mr. Owino for COOTOW & Associates Advocates

For Respondent - Ms. Kisa for P.K.Kamau & Co. Advocates

