

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**  
**CIVIL APPEAL E076 OF 2024**

**JOHN MURITU IREGI.....1<sup>ST</sup> APPELLANT**  
**BENSON IRUNGU GACHUNGU..... 2<sup>ND</sup> APPELLANT**  
**VERSUS**  
**ELIZABETH TAPRANDICH.....RESPONDENT**

**RULING**

1. By a Notice of Motion dated 11<sup>th</sup> May, 2024, and filed under certificate of urgency pursuant to sections 1, 1A &1B of the Civil Procedure Act, Order 22 Rule 22, Order 42 Rules 4, 6 and 7, and Order 51 Rules 1 and 3 of the Civil Procedure Rules and all other enabling provisions of the law, seeking for Orders that:-

- 1. Spent.**
- 2. Spent.**
- 3. *This Honourable Court be pleased to issue an Order of stay of execution of the judgement delivered on 21/03/2024 and all consequential Orders arising therefrom pending the hearing and determination of this Application.***
- 4. *This Honourable Court be pleased to issue an Order for Provision of a Bank Guarantee of the entire decretal sum awarded by the trial Court of Kshs 360,240, only as security pending hearing and determination of the HCCA E076 of 2024.***
- 5. *This Honourable Court be pleased to issue any other Order as it may deem just, appropriate and expedite in the interest of justice.***
- 6. *Costs of this Application be provided for.***

2. The grounds are on the face of the application supported by the Affidavit sworn by the 1<sup>st</sup> Appellant on 11<sup>th</sup> May, 2024. He states that the judgement delivered on 21/3/2024 was in favour of the Respondent in that the Court found them 100% liable and awarded the Respondent Kshs. 350,000 as general damages, Kshs. 10,240 as special damages together with costs and interest therein.
3. They state that they are dissatisfied with that decision and have appealed the entire judgement and that the Appeal raises several triable issues which are meritorious and with high chances of success. They are apprehensive that the Respondent might not be in a position to refund the decretal sum if the same is paid to her and the Appeal succeeds.
4. They further state that there is eminent execution that is likely to cost them. That they are willing to furnish security by depositing the entire decretal sum in Court for due performance of the decree. In the Supporting Affidavit, they state that they will deposit a bank guarantee from the Family Bank as security.
5. The Respondent has opposed this application and filed a Replying Affidavit sworn on 7<sup>th</sup> June, 2025. She terms the application incompetent, bad in law and an abuse of Court process. Further, that it violates the doctrine of exhaustion as the Applicants should have sought for stay Orders in the lower court and not in this Court.
6. She contends that the application has been made with unreasonable delay and that the Applicants have not demonstrated the loss they would suffer if the decretal sum is paid to her and further, no evidence has been tendered to suggest that she is a person of straws who will not be able to refund the decretal sum in the event the Appeal succeeds.

7. Further, she depones that the Appeal has zero chances of success and has only be filed as a decoy to delay her from enjoying the fruits of her judgement.
8. She objects to the proposed Bank Guarantee on the grounds that the stability of the Bank where the Gguarantee is taken from is not known. However, in the alternative, she urges this Court to order half of the decretal sum to be paid to her and the other half be deposited in an interest earning account in the joint names of the advocates on record.
9. Though directions were taken for the application to be disposed of by way of written submissions, the parties later agreed to rely on their respective Affidavits in determining the application save for the issue of security.
10. As regard security, Ms. Mwila Advocate holding brief for Nasimiyu Advocate for the Applicants informed this Court on 18<sup>th</sup> November, 2024, that the Bank Guarantee they were offering for security had expired. She proposed to deposit the entire decretal sum in Court.
11. On her part, Ms. Kirui Advocate for the Respondent submitted that the parties had agreed to have half of the decretal sum deposited in court and the other half be deposited in an interest earning account in the joint names of the Advocates. This was confirmed by Ms Mwila who was holding brief for Ms Nasimiyu for the Applicants.

### **Analysis and Determination**

12. The principles governing stay of execution pending appeal are set out under Order 42 Rule 6 (2) of the Civil Procedure Act as follows: -

***“ No order to 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.”*

13. As regard time taken to file the current application, the judgement of the trial court was rendered on 21<sup>st</sup> March, 2024, the Appeal was lodged on 18<sup>th</sup> April, 2024, while the current application was filed on 11<sup>th</sup> May, 2024. Though the application was filed about 50 days after the date of the impugned judgment, the delay cannot be termed as inordinate in the circumstances herein.
14. On substantial loss, it is trite that the fact that the process of execution has been put in motion or is likely to be put in motion, does not by itself, amount to substantial loss under Order 42 Rule 6 of the Civil Procedure Rules. The Applicants’ demonstration of what substantial loss is likely to be suffered is the core to granting a stay order pending Appeal.
15. In this case, the Applicants stated that if stay is not granted and execution proceedings ensue, it will be to their detriment and the Appeal would be rendered nugatory. Further that the financial worth of the Respondent is unknown and therefore, if the decretal sum is paid to her, she might not be in a position to refund the same.
16. Though, the Respondent refuted the allegations that she is a person of straw, there is no mention in her Replying Affidavit, of her capability to refund the decretal sum if the Appeal succeeds.
17. However, considering that the parties have already consented on the issue of security, this application is allowed in the following terms: -

**1. Stay of execution of judgment in Nakuru CMCC 117 of 2020 delivered on 21<sup>st</sup> March, 2024 be and is hereby granted pending the hearing and determination of the Appeal.**

2. The Applicants to deposit in court half ( $\frac{1}{2}$ ) of the decretal sum and the other half ( $\frac{1}{2}$ ) be deposited in an interest earning Account in the joint names of the Advocates for the parties, within 30 days.
3. In default of (2) above, the stay of execution shall automatically lapse and the Respondent at liberty to execute.
4. Costs of this application to abide the outcome of the Appeal.

Dated, signed and delivered at Nakuru this 7<sup>th</sup> Day of May, 2025.

**PATRICIA GICHOHI**

**JUDGE**

**In the presence of:**

**Ms Kingori holding brief for Ms Nasimiyu for Applicants**

**Ms Kirui for Respondent**

**Ruto, Court Assistant**