



REPUBLIC OF KENYA



**Twinkids Academy & another v Wanyonyi (Civil Appeal E1147 of 2024)
[2025] KEHC 12218 (KLR) (Appeals) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 12218 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
APPEALS
CIVIL APPEAL E1147 OF 2024
TW CHERERE, J
MAY 15, 2025**

BETWEEN

TWINKIDS ACADEMY 1ST APPELLANT

CHARLES MWANGI 2ND APPELLANT

AND

BONIFACE SIFUNA WANYONYI RESPONDENT

RULING

“The court’s discretion to grant a stay of execution is meant to ensure that justice is not rendered illusory; it is not a license to deny a successful litigant the fruits of judgment, but a safeguard to protect a genuine appeal from being rendered nugatory.”

1. By Notice of Motion dated 07th April 2025 brought under Order 42 Rule 6(2), Order 51 Rule 1 of the *Civil Procedure Rules* and Section 3A of the *Civil Procedure Act*, the Appellants seek the following orders:
 1. That there be a stay of execution of the judgment delivered on 05th September 2024 in Milimani CMCC No. E1233 of 2022 pending the hearing and determination of the appeal;
 2. That costs of the application be in the cause.
2. The application is supported by the affidavit of William Kipkorir Arusei, learned counsel for the Appellants, sworn on 07th April 2025 and is premised on the grounds that:
 1. The Appellants were dissatisfied with the judgment on both liability and quantum
 2. The Appellants have filed an appeal which they believe has high chances of success



3. The Respondent has threatened to execute the judgment
 4. The Appellants will suffer substantial loss if execution proceeds, rendering the appeal nugatory
 5. The decretal sum is in the region of Kshs. 1,987,021.24, and the Appellants may not recover it in the event of a successful appeal
3. The application is opposed through a replying affidavit sworn on 23rd April 2025 by the Respondent, who contends that:
1. The Appellants have had notice of the judgment since its delivery on 05th September 2024
 2. It has been over four years since the accident occurred
 3. In the interest of equity, the Appellants should pay half the decretal amount and deposit the balance in an interest-earning account in the joint names of both advocates.

Issues for Determination

4. From the affidavits on record, the main issues for determination are:
1. Whether the Appellants have met the threshold for stay under Order 42 Rule 6(2);
 2. Whether the Appellants have an arguable appeal

Analysis and Determination

1. Whether the 2nd Respondent Has Met the Threshold for Stay Under Order 42 Rule 6 of the Civil Procedure Rules

5. Under Order 42 Rule 6(2), an applicant must demonstrate:
1. That the application was made without unreasonable delay;
 2. That substantial loss may result unless the order is made;
 3. That such security as the court orders has been given.
6. In *Visbram Ravji Halai v Thornton & Turpin* (1990) eKLR, the Court of Appeal emphasized that delay must be viewed contextually. The judgment was delivered on 05th September 2024. The application was filed on 07th April 2025, a period of approximately seven months.
7. Even though the delay is notable, it is not inordinate or prejudicial. I find that, in the circumstances of this case, the delay is not so unreasonable as to defeat the application.
8. The Appellants argue that if execution proceeds and the appeal succeeds, they will not be able to recover the decretal sum due to the Respondent's undisclosed means.
9. In *National Industrial Credit Bank Ltd v Aquinas Francis Wasike & Another* [2006] eKLR, the Court of Appeal held that where an applicant expresses a reasonable fear that the Respondent would be unable to repay the decretal amount, the burden shifts to the Respondent to demonstrate financial capability.



10. In *Kenya Shell Ltd v Benjamin Karuga Kibiru & Another* [1986] KLR 410, the Court held:
- “Substantial loss is what has to be prevented by preserving the *status quo* because such loss would render the appeal nugatory.”
11. The Respondent has not countered the Appellant’s apprehension of his inability to repay the decretal sum in the event that the appeal succeeds. Consequently, I am satisfied that the Appellants have met the threshold for demonstrating substantial loss.
12. In *Absalom Dova v Tarbo Transporters* [2013] eKLR, the Court stated:
- “The security needed under Order 42 rule 6 is meant to guarantee the due performance of the decree should the appeal not succeed.”
13. The Appellants did not propose security in their motion. However, the Respondent suggested that half of the decretal sum be paid and the balance deposited in a joint account. The Court is not bound by the parties’ proposals and retains the discretion to impose suitable terms of security, even where none has been offered by the applicant, in order to balance the competing rights and ensure due performance of the decree in the event the appeal does not succeed.

Disposition

14. In *Butt v Rent Restriction Tribunal* [1982] KLR 417, the Court of Appeal held:
- “The power to grant or refuse a stay is discretionary. The discretion should be exercised in such a way as not to prevent an appeal.”
15. For the foregoing reasons, the application dated 07th April 2025 is hereby allowed on the following terms:
1. There shall be a stay of execution of the judgment delivered on 05th September 2024 in Milimani CMCC No. E1233 of 2022 pending the hearing and determination of the appeal
 2. The stay is conditional upon the Appellants depositing half (½) of the decretal sum into court
 3. In default of (2) above, the stay shall lapse automatically without further reference to the Court
 4. Costs of this application shall abide the outcome of the appeal
 5. Mention before the Deputy Registrar on 12th June 2025 to confirm the filing of the record of appeal

DELIVERED AT NAIROBI THIS 15th DAY OF May 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Abdirizack

For Appellants - N/A for Arusei & Co. Advocates

For Respondent - N/A for Musili Mbiti Advocates LLP

