



REPUBLIC OF KENYA



**Nzoka & another v Hozila alias Uzera (Civil Appeal E011 of 2025)  
[2025] KEHC 12201 (KLR) (Civ) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 12201 (KLR)

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

**CIVIL  
CIVIL APPEAL E011 OF 2025**

**TW CHERERE, J**

**JUNE 5, 2025**

**BETWEEN**

**JEDIDAH NZOKA ..... 1<sup>ST</sup> APPELLANT**

**KYALO KISONGE ..... 2<sup>ND</sup> APPELLANT**

**AND**

**MOUSSA KWEZERA HOZILA ALIAS UZERA ..... RESPONDENT**

**RULING**

1. Before this Court is a Notice of Motion dated 14<sup>th</sup> April 2025 brought under Order 42 Rule 6(6) of the Civil Procedure Rules. The Appellants seek a stay of execution of the judgment delivered on 17<sup>th</sup> February 2025 in Nairobi SCCC No. E5841 of 2024 pending the hearing and determination of the appeal.
2. The application is supported by the affidavit of the 1<sup>st</sup> Appellant, Jedidah Nzoka sworn on the same date. The grounds upon which the application is premised are that judgment was entered in default, warrants of attachment have been issued, the Respondent's goods have been proclaimed, the Appellants' insurer has refused to settle the decree, and that a prior application for stay before the trial court was declined.
3. The Respondent opposed the application by a replying affidavit sworn on 23<sup>rd</sup> May 2025. The Respondent contends that the application is a tactic to delay the enjoyment of the fruits of judgment. In the alternative, the Respondent proposes that the Appellants be ordered to deposit half of the decretal sum in court and the other half with counsel for the Respondent as a condition for stay.



## Issues for Determination

4. I have considered the application in light of the affidavits on record and the issue for determination is whether Appellants have met the threshold for stay of execution pending appeal.
5. Order 42 Rule 6(6) of the Civil Procedure Rules, which provides:

“Notwithstanding anything contained in subrule (1) of this rule, the High Court shall have power when an appeal from the subordinate court or tribunal has been filed, to order stay of execution, on such terms as it may think just.”
6. Further guidance is provided by Order 42 Rule 6(2), which provides:

“No order for stay of execution shall be made under subrule (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.”
7. The impugned judgment was delivered on 17<sup>th</sup> February 2025, and the present application was filed on 14<sup>th</sup> April 2025.
8. In *Vishram Ravji Halai v Thornton & Turpin (Civil Engineers)* [1990] eKLR, the Court of Appeal stated:

“What is required is that the application be made without unreasonable delay. What amounts to unreasonable delay depends on the facts and circumstances of each case.”
9. Although no explanation has been offered for the lapse of time, a delay of two months is not necessarily inordinate and is excusable.
10. In *Kenya Shell Ltd v Benjamin Karuga Kibiru & Another* [1986] KLR 410, the Court of Appeal emphasized that substantial loss is the cornerstone of the jurisdiction to grant stay:

“It is usually a good rule to see if Order XLI rule 4 [now Order 42 rule 6] has been satisfied and if it is, then go on to consider other matters... The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the essential core of the applicant as a successful party in the appeal.”
11. The Appellants contend that the insurer has refused to honour the judgment and that the Respondent has moved to enforce the decree. As held in *Antoine Ndiaye v African Virtual University* [2015] eKLR, mere apprehension of hardship does not suffice; the applicant must show real and demonstrable risk of loss which the Respondents in this case have failed to demonstrate.
12. Additionally, having obtained a valid judgment and decree, the Respondent was lawfully entitled to execute the decree and realize the fruits of his judgment. As emphasized by the Court in *Machira T/A Machira Co. Advocates v East African Standard (No. 2)* (2002) 2 KLR:

“The ordinary principle is that a successful party is entitled to the fruits of his judgment or of any decision of the court giving him success at any stage. That is trite knowledge. This is one of the fundamental procedural values which is acknowledged and normally must be put



into effect by the way we handle applications for stay of further proceedings or execution, pending appeal...in the application of that ordinary principle, the court must have its sight firmly fixed on upholding the overriding objective of the rules of procedure for handling civil cases in courts, which is to do justice in accordance with the law and to prevent abuse of the process of the court.”

13. The Court will not lightly interfere with that entitlement in the absence of a just basis grounded in law and evidence.
14. It is worth mentioning that the Appellants have not offered or proposed any form of security despite the express statutory requirement and the Respondent's proposal for deposit of the decretal sum as a condition for stay.
15. In *Absalom Dova v Tarbo Transporters* [2013] eKLR, the Court of Appeal held:

“The discretionary relief of stay pending appeal is governed by Order 42 Rule 6(2) of the Civil Procedure Rules. The rule requires the applicant to demonstrate that he will suffer substantial loss if stay is not granted, that the application has been brought without unreasonable delay, and that such security as the court orders has been given. These three conditions must be satisfied conjunctively.”
16. The lack of any proposal for security contradicts the mandatory requirement of Order 42 Rule 6(2) (b) and serves as a basis for the denial of the application.

### **Disposition**

17. In conclusion, I find that the Appellants have not demonstrated that they will suffer substantial loss if the stay is not granted. They have also not satisfied the requirement for the provision of security.
18. Consequently, it is hereby ordered:
  1. The Notice of Motion dated 14<sup>th</sup> April 2025 lacks merit and it is hereby dismissed with costs to the Respondent
  2. Mention before the Deputy Registrar on 31<sup>st</sup> July 2025 to confirm the filing of the record of appeal

**DELIVERED AT NAIROBI THIS 05<sup>TH</sup> DAY OF JUNE 2025**

**WAMAE.T. W. CHERERE**

**JUDGE**

Appearances

Court Assistant - Ubah

For Appellants - N/A for D. Muinde & Associates Advocates

For Respondent - Mr. Odhiambo for David Omondi & Co. Advocates

