



**Momanyi alias Rebecca Obwoge v Onsongo (Civil Appeal
E023 of 2023) [2025] KEHC 11122 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11122 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CIVIL APPEAL E023 OF 2023
WA OKWANY, J
JULY 24, 2025**

BETWEEN

MELLEN NYABOKE MOMANYI ALIAS REBECCA OBWOGE APPELLANT

AND

DAVID KINANGA ONSONGO RESPONDENT

(Being an Appeal from the Judgment in the High Court at Nyamira in HCCA No. E023 of 2023, delivered by Hon. Lady Justice W.A. Okwany Judge of the High Court on 25th July 2024)

RULING

1. The Respondent herein, dissatisfied with the judgment delivered by this Court on 25th July 2024, filed a Notice of Motion dated 6th August 2024 seeking a stay of execution pending the determination of an intended appeal to the Court of Appeal. The Application, brought under Orders 22 Rule 22, 42 Rule 6, and 51 Rule 1 of the *Civil Procedure Rules*, specifically seeks stay pending the hearing and determination of an application for leave to appeal out of time and the intended appeal.
2. The Respondent's Application is supported by an affidavit in which he avers that the amount awarded in the judgment against him is substantial and exposes him to imminent execution, which could irreparably affect his life. He also stated that he had since engaged a new advocate who had filed a Notice of Appeal, and that he was acting without delay to protect his rights.
3. In opposition, the Appellant filed a Replying Affidavit dated 9th May 2025. She strongly opposed the Application, arguing that the Respondent had not met the threshold for grant of stay. She asserted that the claim of losing contact with former counsel was unsubstantiated, that no proof of an active appeal was presented, and that the Application was brought in bad faith to delay justice. She also argued that granting the orders would contravene constitutional provisions on timely justice, and that no sufficient material was placed before the Court to support the prayer for stay.



4. The dispute stems from a suit originally filed by the Appellant in the trial court seeking compensation from the Respondent and one Elvis Muthoka Itaa. The trial court dismissed her claim against the Respondent with costs on 24th May 2023. Aggrieved, the Appellant appealed to this Court via a Memorandum of Appeal dated 6th June 2023. The Court found in her favour, holding the Respondent 100% liable and awarding her Kshs. 2,700,000 in general damages and Kshs. 281,920 in special damages, making a total award of Kshs. 2,981,920, together with costs and interest.
5. I have carefully considered the Notice of Motion dated 6th August 2024, the affidavits on record, and the submissions filed by the Appellant. The main issue for determination is whether the Applicant has met the threshold for grant of stay of execution pending appeal as set out under Order 42 Rule 6 of the Civil Procedure Rules.
6. For the Court to grant a stay of execution, the Applicant must satisfy the following conditions under Order 42 Rule 6(2):
 - (c) That such security as the court orders for the due performance of such decree or order as may ultimately be binding on the Applicant has been given.
 - (b) That substantial loss may result to the Applicant unless the order is made; and
 - a) That the application has been brought without unreasonable delay;
7. In Multimedia University & Another v Professor Gitile N. Naituli [2014] eKLR, the Court of Appeal held thus: -

“When one prays for orders of stay of execution, as we have found that those are what the applicants are actually praying for, the principles on which this Court acts, in exercise of its discretion in such a matter, is first to decide whether the applicant has presented an arguable appeal and second, whether the intended appeal would be rendered nugatory if the interim orders sought were denied.
8. On the issue of delay, I note that the judgment sought to be stayed was delivered on 25th July 2024, and the present Application was filed on 6th August 2024, a period of less than two weeks. I am satisfied that the Application was filed without unreasonable delay.
9. On the question of substantial loss, the Applicant avers that the judgment sum is colossal and may irreparably affect his life if executed. However, no attempt was made to demonstrate, through bank records or financial statements, that the Applicant would be unable to recover the sum if the appeal succeeded. Mere allegations of hardship, without more, do not satisfy this requirement.
10. On the issue of security, the Applicant has not offered any form of security for the due performance of the decree. It is trite law that stay of execution is a discretionary remedy and the provision of security is a mandatory requirement unless specifically waived by the Court for good reason. The Applicant has not demonstrated any such compelling reasons to warrant waiver of this requirement.
11. I also note that even though the Applicant alleges that a Notice of Appeal has been filed, no evidence of service or any further step taken towards pursuing the appeal has been presented. The Court is therefore left with no assurance that the intended appeal is not frivolous or merely intended to delay the fruits of a valid judgment.
12. In view of the above findings, I am of the view that the Appellant rightly pointed out that the Application has not been supported with sufficient material to enable the Court exercise its discretion



in favour of the Applicant. There is nothing to show that the intended appeal raises arguable grounds or that the interests of justice would be better served by granting the orders sought.

13. In the circumstances of this case, I am not persuaded that the Applicant has satisfied the conditions necessary for grant of stay of execution pending appeal.

Conclusion

14. The Notice of Motion dated 6th August 2024 is hereby dismissed with costs to the Appellant/ Respondent.
15. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA VIRTUALLY VIA MICROSOFT TEAMS THIS 24TH DAY OF JULY 2025.

W. A. OKWANY

JUDGE

