



REPUBLIC OF KENYA



KENYA LAW
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**Mwangi v Njoroge & another (Civil Appeal E1103 of 2024)
[2025] KEHC 10767 (KLR) (Civ) (22 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10767 (KLR)

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

CIVIL

CIVIL APPEAL E1103 OF 2024

LP KASSAN, J

JULY 22, 2025

BETWEEN

PETER NJUGUNA MWANGI APPELLANT

AND

RICHARD NDEGWA NJOROGE 1ST RESPONDENT

BRYAN MWANGI T/A VINTAGE AUCTIONEERS 2ND RESPONDENT

RULING

1. Before this court is a Notice of Motion dated 05.10.2024 brought under, Sections 1A, 1B, 1A and 1B of the *Civil Procedure Act*, Order 42 Rule 6 of the Civil Procedure Rules 2010, and all enabling provisions of the law wherein the Applicant seeks orders to wit:
 - a. Spent
 - b. That this Honourable Court be pleased to review its orders issued on 3rd December 2024 as to the deposit of the Kshs 1,000,000/= and instead order that there shall be stay of execution subject to the Applicant depositing Kshs 500,000/= into a joint interest account between the Advocates of the parties on or before the 3rd February 2025 when the matter will be coming for mention.
 - c. That any other orders that the Honourable Court be pleased to issue in the circumstances.
 - d. That the costs of this application be provided for.
2. The Applicant/Appellant appreciates the court granting the conditional stay of execution. However, the Applicant states that he is a small businessman in Thika and is unable to raise the required Kshs. 1,000,000/- within the short period of one month. The looming December festivals pose a challenge



to the Applicant in raising the required amount. This is because the festive season will strain his means even more when schools open and he has to pay school fees for his children.

3. The Applicant is ready to deposit Kshs. 500,000/- into a joint earning interest account between the Advocates of the parties. This amount is willing to be retained as security subject to further orders and conditions. The Applicant is willing and ready to abide by any order of the court within a period of two months or before the Hearing of the Application.
4. It is in the interest of justice that the orders sought are granted. Failure to grant these orders will amount to denying the Applicant the opportunity to exhaust his legal remedies. The Applicant's appeal raises triable issues with high chances of success and has been made without unreasonable delay. The Applicant is able to comply with any order as to security of costs.
5. The application is further supported by the annexed affidavit of Peter Njuguna Mwangi, the Applicant, sworn on 5 December 2024. He deposes the following: He is an adult male of sound mind and the Applicant/Appellant herein. He is aggrieved by the Judgment of the Learned Trial Magistrate Hon. E.C. Chelule (RM) delivered on 5 September 2024 in MCCC Suit Number No. 1485 of 2019 at the Magistrate Court at Milimani Commercial Courts. He has filed an appeal against this whole judgment at the High Court. He filed an application on 29 November 2024 under a certificate of urgency seeking a stay of execution of the judgment delivered on 5 September 2024. A decree is pending the hearing and determination of his appeal. On 3 December 2024, the court graciously granted him a Stay of execution. This was conditional on the condition that he pay Kshs. 1,000,000/- to the court, and that he should do the same by the close of business on 4 January 2024. He states that he is a small businessman in Nairobi and is not able to raise that colossal amount within that short period of one month. He further states that the upcoming holiday season, the school fees required in January, and the hard economic times make it impossible to raise the security as ordered. He prays that the court allows him to deposit Kshs. 500,000/- into an interest-earning account between the advocates of the parties on or before the Hearing of the Application slated for 3 February 2025. He reiterates that it is in the interest of justice that the orders sought are granted and that failure will amount to denying him the opportunity to exhaust his legal remedies. The application has been made without unreasonable delay. He will be able to comply with the order as to security of costs.
6. The application was canvassed by way of written submissions.
7. 1st Respondent's replying affidavit Drawing upon the sources and our conversation history, the core of the matter revolves around the Appellant's application to modify a conditional stay of execution order. The Appellant, having been ordered to deposit Kshs 1,000,000/- as security for a stay of execution, argues that as a small businessman, he is unable to raise this amount within the stipulated timeframe, especially given impending festive season expenses and school fees. He proposes depositing a lesser amount of Kshs 500,000/- into a joint interest-earning account as security, maintaining that his appeal raises triable issues with high chances of success. Conversely, the 1st Respondent opposes this application, contending that the lower court judgment was correctly decided and the appeal lacks merit or arguable issues. The 1st Respondent argues the Appellant has not demonstrated irreparable loss, asserts his own capacity as a man of means capable of refunding the decretal sum if the appeal succeeds, supported by evidence of a prior Kshs 900,000/- transfer to the Appellant, and expresses apprehension about the Appellant's compliance with security orders, referencing the decretal sum of Kshs 1,692,948/- and an alleged past failure by the Appellant to honour a settlement agreement to refund Kshs 900,000/-.



Applicant's submissions

8. The Appellant's written submissions, dated 31st January 2025, support their application by way of Notice of Motion dated 29th November 2024, which seeks a stay of execution of the lower court judgment pending appeal. The submissions frame the issues for determination as whether the Applicant will suffer substantial loss, whether security has been provided, and whether the appeal has high chances of success, guided by Order 42 Rule 6 of the Civil Procedure Rules. The Appellant argues that as a businessman, paying the decretal amount would significantly harm his capital and that he may not recover the sum if the appeal is successful, especially as the 1st Respondent's ability to refund is questioned due to a lack of supporting evidence for his claimed employment and earnings. Referencing the authority of *Suleiman vs. Amboseli Resort Limited and Caneland Ltd. & 2 Others vs. Delphis Bank Ltd.*, the Appellant contends there is a high risk of injustice and loss if the stay is not granted and the 1st Respondent is unable to refund the executed sum.
9. Furthermore, the submissions address the requirement for security for the due performance of the decree under Order 42 Rule 6. Citing *Gianfranco Manenthi & another vs. Africa Merchant Assurance Company Ltd*, the Appellant notes that security ensures the successful litigant can enjoy the fruits of judgment if the appeal fails, but should not impede the right to appeal. The Appellant states that they sought permission to pay Kshs 500,000/= and submits that security has "already been paid", asserting this payment abides by Order 42 and adequately protects the opposing party without unduly disadvantaging the Appellant. The Appellant concludes that all three conditions for granting a stay of execution under Order 42 of the Civil Procedure Rules have been satisfied and requests that costs follow the event, meaning costs should be awarded to the Applicant if the application is granted

Respondent's submissions

10. The 1st Respondent's written submissions, dated 30th January 2025, address the Honourable Court regarding the Appellant's application dated 29th November 2024, which sought a stay of execution of the judgment delivered by Hon. E.C. Chelule (RM) on 5th September 2024 in MCCC Suit Number No. 1485 of 2019. The 1st Respondent strongly opposes this application. The submissions outline the brief facts and present three key issues for the court's determination: whether the application is merited, who is entitled to the costs of the application, and a conclusion. The guiding principles for Stay of Execution applications, particularly Order 42 Rule 6 of the Civil Procedure Rules 2010, which requires demonstration of substantial loss, that the application was made without unreasonable delay, and provision of security for the due performance of the decree, are highlighted as central to assessing the application's merit.
11. In arguing that the application lacks merit, the 1st Respondent submits that the Appellant has failed to prove that he would suffer substantial loss if the stay is not granted. They contend that the mere fact that execution has been put in motion or is likely to be put in motion does not amount to substantial loss. Furthermore, they argue that the Appellant has not discharged the burden of demonstrating irreparable harm. The 1st Respondent asserts they are a man of means and capable of refunding the decretal amount if the appeal is successful, and conversely, granting the stay would cause them prejudice by delaying enjoyment of the judgment's fruits. Regarding delay, the 1st Respondent points out that the application was filed on 29th November 2024, approximately three months after the judgment, submitting that this constitutes a long and inordinate delay. They also contend that the Appellant has not satisfied the conditions for security as ordered by the court. Based on these arguments, the 1st Respondent believes the Appellant's application is frivolous, lacks merit, fails to satisfy the prerequisites for a stay, and should be dismissed with costs



Analysis & Determination

12. I have considered the Application, responses and the submissions filed herein. The main facts relating to the Application herein are not in dispute. The Applicant seeks, inter alia, a review of the court's conditional stay of execution orders issued on 3rd December 2024, reducing the security sum from Kshs 1,000,000 to Kshs 500,000, to be deposited in a joint interest-earning account.
13. The issues for determination herein are
 - i. Whether there is merit in varying the terms of stay of execution.
 - ii. Who should bear the costs of this application?
14. Generally, a stay of execution pending appeal is provided under Order 42 Rule 6 of the Civil Procedure Rules 2010, which provides:

“Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”
15. The decretal sum awarded in the primary suit was Kshs 1,512,493.15/=. The Court ordered that a decretal sum of Kshs 1,000,000/= be deposited in court. The Applicant seeks to vary the same on the grounds that he is undergoing economic constraint in depositing the said security. The other ground was that due to the upcoming festivities of the December holiday he would be unable to get the security. The Applicant states he is a small-scale businessman who risks financial hardship if compelled to pay Kshs 1,000,000 within one month. However, no documentary evidence such as audited accounts or bank statements has been provided to corroborate the alleged financial hardship. On this limb, the Applicant falls short.
16. The Respondent has expressed apprehension based on a previous breach of a settlement agreement. However, balancing the right to appeal and the need to safeguard the Respondent's interests, the proposed amount can be accepted as sufficient security subject to strict timelines. It has now been over six (6) months, the Applicant should at least meet half the decretal sum as he pursues his appeal.
17. Taking all relevant factors into consideration, I do order that;
 - a. The Applicant will deposit half the decretal sum of Kshs 760,000/= into an interest earning account in the joint names of the parties' advocates within 30 days from this Ruling date.
 - b. In default of any of these conditions, the Respondent shall be at liberty to execute.
 - c. The costs of this Application will be in the cause.
18. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 22ND DAY OF JULY 2025.

LINUS P. KASSAN

JUDGE

In the presence of;

No appearance for Appellant



Kokwo holding brief Ongegu for Respondent

Carol – Court Assistant

