



REPUBLIC OF KENYA



**Ndegwa v Amollo & 3 others (Civil Appeal E865 of 2024)
[2025] KEHC 10525 (KLR) (Civ) (18 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10525 (KLR)

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

CIVIL

CIVIL APPEAL E865 OF 2024

AC MRIMA, J

JULY 18, 2025

BETWEEN

JOSEPH NYANG'OR NDEGWA APPELLANT

AND

ARABELLA ACHIENG AMOLLO & 3 OTHERS RESPONDENT

RULING

1. The application by way of Notice of Motion, subject of this ruling, is dated 16th August 2024. It is supported by an Affidavit sworn by the Applicant deposed to on a similar date. The application sought the following reliefs: -
 1. This application be certified urgent and service thereof be dispensed with in the first instance.
 2. There be a stay of execution of the judgment delivered by the Hon. L.B. Koech on 16th July 2024 in Milimani CMCC No. E3352 of 2022, *Arabella Achieng Amollo v Joseph Nyang'or Ndegwa & Others* pending the hearing and determination of this application.
 3. There be a stay of execution of the judgment delivered by the Hon. L.B. Koech on 16th July 2024 in Milimani CMCC No. E3352 of 2022, *Arabella Achieng Amollo v Joseph Nyang'or Ndegwa & Others* pending the hearing and determination of this appeal.
 4. There be a stay of proceedings in the following matters pending the hearing and determination of this appeal;
 - a. Milimani CMCC No. E4307 of 2022.
 - b. Milimani CMCC No. E4308 of 2022.
 - c. Milimani CMCC No. E3697 of 2022.



- d. Milimani CMCC No. E3355 of 2022.
 - e. Milimani CMCC No. E4011 of 2022.
 - f. Milimani CMCC No. E3736 of 2022.
 - g. Milimani CMCC No. E3684 of 2022.
 - h. Milimani CMCC No. E4505 of 2022.
 - i. Milimani CMCC No. E3353 of 2022.
 - j. Milimani CMCC No. E3698 of 2022.
 - k. Milimani CMCC No. E3351 of 2022.
 - l. Milimani CMCC No. E6201 of 2022.
5. The costs of this application be provided for.
2. As discerned from the supporting Affidavit and the grounds in support of the application, the background to the instant application was that Arabella Achieng Amollo instituted Milimani CMCC No. E3352 of 2022 against *Joseph Nyang'or Ndegwa & Others* [hereinafter referred to as 'the suit'] as a result of an accident that occurred on 4th May 2022 along Haile Selassie/Uhuru Highway roundabout when she was aboard motor vehicle registration number KBK 989K. This suit was treated as a test suit in respect of 12 other cases that were filed as a result of the said accident.
 3. In a judgment delivered on 16th July 2024, the Appellant herein was found to be 100% liable for the accident and the Plaintiff therein, Arabella Achieng Amollo [now 1st Respondent], was awarded Kshs. 150,000/= as general damages, special damages, costs and interest. It was that judgment that prompted the filing of the appeal and the current application. It appears that the finding on liability was adopted in all the other cases and damages were assessed in subsequent judgments. The execution of those judgments is what is sought to be stayed in the instant application as the Applicant was dissatisfied with the decision in the test suit.
 4. The Applicant contended that the appeal is arguable and that the 1st Respondent's financial means are unknown and that in the event the appeal succeeds then it will be impossible to recover the sums paid. In the end, the Applicant expressed his willingness to furnish security as the Court directs. To buttress his position, the Applicant filed written submissions where it referred to decisions in inviting this Court to find in its favour.
 5. The application was opposed by the 1st Respondent through a Replying Affidavit wherein she mainly asserted that nonsufficient grounds were tendered for the grant of the orders sought and that the application was meant to delay the determination of the matter. She also filed written submissions and referred to various decisions.
 6. Having carefully considered the application, the response, the parties' submissions and the decisions referred thereto, there is only one issue for determination. It is whether this Court should stay the execution of the decree in the suit pending the outcome of the appeal. In reaching the conclusion thereof, this Court is called upon to look at the applicable legal principles against the parties' positions and interests.
 7. The applicable principles in instances where a Court is called upon to consider granting stay of execution orders are well settled. Order 42, Rule 6 of the [Civil Procedure Rules](#) provides that an



Applicant must satisfy the following conjunctive requirements for the grant of stay of execution pending appeal; that is to say: -

- i. The application has been made without unreasonable delay;
- ii. Substantial loss may result to the Applicant unless the order is made; and
- iii. That the Applicant is willing to furnish such security as the court order for the due performance of such decree.

8. It is not lost that the purpose of stay pending appeal as held in the case of [RWW v. EKW](#) [2019] eKLR, is as follows: -

... The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs... Indeed, to grant or refuse an application for stay of execution pending appeal is discretionary. The Court when granting the stay however, must balance the interests of the Appellant with those of the Respondent.

9. The application shall, hence, be determined under the three parameters captioned above. As to whether the application was filed timeously, the record has it that it was instituted within a month of the delivery of the impugned judgment. There was, therefore, no delay in this matter.

10. On whether the Applicant will suffer any substantial loss, that subject was discussed in [James Wangalwa & Another v. Agnes Naliaka Cheseto](#) [2012] eKLR as follows: -

... No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.

11. The principal contention by the Appellant in the application is that he is not aware of the financial position of the 1st Respondent and fears non-recovery of the funds once paid in case the appeal succeeds and if the judgment is not stayed. The 1st Respondent did not respond to that specific issue. In such a case, the Applicant's fears are not far-fetched and any non-recovery leads to substantial loss. The 1st Respondent was supposed to express her position on the matter.

12. On the aspect of security, the Applicant left the issue to the Court.

13. On a consideration of the above conditions, and for equity sake, it is this Court's position that a conditional stay of execution order be granted in the unique circumstances of this matter.

14. Having so said, the application is determined in the following manner: -



- a. There be a stay of execution of the judgments and decrees in all the cases in which Milimani CMCC No. E3352 of 2022 was a test suit on condition that one-half of the decretal sums are deposited in Court within 21 days of this ruling.
- b. In the event of default on the part of the Appellant, the order of stay of execution of the judgments and decrees in the respective suits will automatically lapse and the Respondents shall be at liberty to execute for the entire decretal sums.
- c. For clarity, proceedings in any of the matters in which Milimani CMCC No. E3352 of 2022 was a test suit in respect to damages are not stayed.
- d. The proceedings in the test suit be typed and certified.
- e. Matter shall be fixed for further directions on a date to issue.

15. Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 18TH DAY OF JULY, 2025.

A. C. MRIMA

JUDGE

Ruling No.1 virtually delivered in the presence of:

Mr. Ondimu, Learned Counsel for the Appellant/ Applicant.

No appearance for Mr. Odhiambo, Learned Counsel for the 1st Respondent.

No appearance for Mr. Morara, Learned Counsel for the 2nd, 3rd and 4th Respondents.

Amina/Annette – Court Assistants.

