



REPUBLIC OF KENYA



**KENYA LAW**  
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**RPB v SPK (Civil Appeal E095 of 2024)  
[2025] KEHC 10456 (KLR) (Family) (18 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10456 (KLR)

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

**FAMILY  
CIVIL APPEAL E095 OF 2024**

**PM NYAUNDI, J**

**JULY 18, 2025**

**BETWEEN**

**RPB ..... APPLICANT**

**AND**

**SPK ..... RESPONDENT**

**RULING**

1. Before this court for determination are two applications. The first application is dated 21<sup>st</sup> August 2024 whereas the second application is dated 11<sup>th</sup> September 2024.
2. In both applications the applicant seeks stay of execution of the ruling delivered on 1<sup>st</sup> July 2022 by Hon H. Nyaga ( as he then was) pending the appeal from the ruling delivered by the Hon. Praxedes Atieno delivered on 25<sup>th</sup> July 2024 in the *Chief Magistrate Divorce Cause No. E229 of 2022*.
3. The backdrop to the appeal is that consequent to the dissatisfaction with the interim maintenance orders issued by the Hon. Nyagah (as he then was) on 1<sup>st</sup> July 2022, the applicant sought and obtained a conditional stay of execution.
4. He proceeded to file an appeal against the ruling on Hon. Nyaga that is *Appeal No. E071 of 2022*. Since there was no order of stay of proceedings the divorce cause proceeded to hearing and judgment was delivered on 19<sup>th</sup> February 2024. In the said judgement the Court observed that in the absence of a stay or appeal from the orders of Hon. Nyaga, the respondent herein was at liberty to execute for the 50% alimony provided for in the ruling of 1<sup>st</sup> July 2022.
5. The Applicant sought a review of this order on the basis that there was an apparent error on the record as the Hon. Nyagah had infact granted stay and an appeal had been filed.



6. In the meantime the respondent has proceeded to demand for the 50% alimony balance thus prompting the application dated 11<sup>th</sup> September 2024.
7. In response the respondent has filed Preliminary Objection dated 13<sup>th</sup> September 2024, Grounds of Opposition dated 15<sup>th</sup> October and replying affidavit dated 11<sup>th</sup> September 2024. It is argued that the applications constitute an abuse of Court process as they are duplicated and the applicant in approaching the Court has concealed material facts.
8. The applications were disposed of by way of written submissions. The applicant filed written submissions dated 24<sup>th</sup> April 2025 whilst the Respondent's submissions are dated 9<sup>th</sup> May 2025.

#### **Applicant's Submissions.**

9. The applicant relied on Order 42 Rule 6(1) and (2) and the case of *Matata & another v Rono & another* (Civil Appeal No. E034 of 2024) [2024] KEHC 2799 (KLR) which provides for stay of execution pending appeal.
10. The applicant argued that he has been complying with the orders of the court. Relying on the decision of *Tropical Commodities Suppliers Ltd & others v International Credit Bank Ltd (in liquidation)* [2004] 2 EA 331, he submitted that he stands to suffer substantial loss if his goods and others not belonging to him are attached because recovering them will be a long process if his appeal succeeds.
11. He submitted that the appeal was filed without undue delay. The trial court delivered its judgment on 25<sup>th</sup> July 2024 and the application for stay was filed on 21<sup>st</sup> August 2024.
12. Lastly, he argued that he is willing to offer security if ordered by the court.

#### **Respondent's Submissions.**

13. The respondent submitted that the applicant has not satisfied the grounds for grant of stay of execution under Order 42 Rule 6 of the *Civil Procedure Rules*. Relying on the decisions of *James Wangalwa & Another v Agnes Naliaka Chesoto* [2018] eKLR and *re Estate of Atanasio Karanu* [2018] eKLR, the respondent submitted that the applicant had not demonstrated satisfactorily that he will suffer substantial loss if stay is not granted.
14. She submitted that the Applicant has not complied with the court orders for maintenance. She argued that the applicant is guilty of laches; he filed Appeal No. 071 of 2022 and did not prosecute the appeal. That the applicant's applications are an abuse of the court process and the same should be dismissed.
15. Lastly, she submitted that the applicant has not offered security and therefore the application for stay should not be allowed. She sought to rely on the decision of *Henry Sakwa Maloba v Boniface Papando* [2020] eKLR where the court held that a party that seeks the right of appeal from money decree of the lower court for an order of stay must satisfy this condition on security.

#### **Analysis And Determination.**

16. I have considered the applications before me, the Reply filed by the Respondent as well as the written submissions filed by each party. The issue for determination is whether the applicant is entitled to stay of execution pending the determination of the appeal herein.
17. It is not in dispute that there is an appeal pending in respect of the ruling of 1<sup>st</sup> July 2022 and there are orders of stay pending the determination of that appeal. That appeal has been pending since 2022



and it is submitted by the applicant that they have prepared the record of appeal and it is now ready for hearing.

18. The principles upon which the court may stay the execution of orders appealed from are settled. The Applicant must approach the court timeously and demonstrate the likelihood that he will suffer substantial loss if the order is denied. He must also furnish security for the performance of the decree in the event the appeal does not succeed. These are the requirements stipulated in Order 42 Rule 6(2) of the [Civil Procedure Rules](#).
19. The decision appealed from was rendered on 25<sup>th</sup> July 2024 and the appeal filed 20<sup>th</sup> August 2024. The present application was filed on 21<sup>st</sup> August 2024. The period is reasonable.
20. On whether substantial loss would result to the applicant if the stay orders are denied, the Court of Appeal in [Shell Ltd v Kibiru and Another](#) [1986] KLR 410, Platt JA set out two different circumstances when substantial loss could arise as follows:

The appeal is to be taken against a judgment in which it was held that the present respondents were entitled to claim damages...It is a money decree. An intended appeal does not operate as a stay. The application for stay made in the High Court failed because the gist of the conditions set out in Order XLI Rule 4 (now Order 42 Rule 6(2)) of the [Civil Procedure Rules](#) was not met. There was no evidence of substantial loss to the applicant, either in the matter of paying the damages awarded which would cause difficulty to the applicant itself, or because it would lose its money, if payment was made, since the respondents would be unable to repay the decretal sum plus costs in two courts...

21. The learned Judge further observed that: -

It is usually a good rule to see if Order XLI Rule 4 of the [civil Procedure Rules](#) can be substantiated. If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the cornerstone of both jurisdictions for granting stay. That is what has to be prevented. Therefore, without this evidence, it is difficult to see why the respondents should be kept out of their money.

22. Earlier on, Hancox JA in his ruling observed that:

It is true to say that in consideration [sic] an application for stay, the court doing so must address its collective mind to the questions of whether to refuse it would... render the appeal nugatory. This is shown by the following passage of Cotton L J in *Wilson v Church* (No 2) (1879) 12ChD 454 at page 458 where he said: -“I will state my opinion that when a party is appealing, exercising his undoubted right of appeal, this court ought to see that the appeal, if successful, is not rendered nugatory.”As I said, I accept the proposition that if it is shown that execution or enforcement would render a proposed appeal nugatory, then a stay can properly be given. Parallel with that is the equally important proposition that a litigant, if successful, should not be deprived of the fruits of a judgment in his favour without just cause.

23. The applicant is apprehensive that if the applicant is allowed to execute he may suffer irreparable loss as he may not be able to recover the property attached if the appeal succeeds. This has not been challenged by the respondent. The Applicant has indicated that he is prepared to deposit security if called upon to do so. The provision of security will safeguard the interest of the applicant. In addition the Applicant will need to move to prosecute the *appeal in E071 of 2022*.



24. In conclusion it is my view that the following orders commend themselves in the circumstances of this case
- a. Stay is granted herein pending the hearing and determination of *HCCA No. E071 OF 2022* on condition that the Applicant deposits in Court the sum of Kshs 2,610,000.00 being 50% of the alimony owing to date as ordered in ruling of 1<sup>st</sup> July 2022 within 45 days from the date hereof.
  - b. The applicant will initiate the process of having the appeal in E071 of 2022 to be heard within 30 days from the date hereof.
  - c. The respondent will have the costs of this application assessed at Kshs 30000 payable within 30 days from the date hereof.
  - d. The matter will be mentioned on 23<sup>rd</sup> September 2025 to confirm compliance and take further directions.
25. Parties at Liberty to appeal. Party exercising their right of appeal to do so within 30 days.

It is so ordered

**SIGNED, DATED and DELIVERED VIRTUALLY AT NAIROBI THIS 18<sup>TH</sup> DAY OF JULY 2025**

**P M NYAUNDI**

**JUDGE**

In the Presence of

Ms. Ndirangu for Applicant

Mugo for Respondent

Fardosa Court Assistant

