



REPUBLIC OF KENYA



KENYA LAW
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**Sagoo Automech Ltd v Silas (Civil Appeal E089 of 2025)
[2025] KEHC 11114 (KLR) (28 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11114 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL E089 OF 2025
PN GICHOHI, J
JULY 28, 2025**

BETWEEN

SAGOO AUTOMECH LTD APPLICANT

AND

LAWRENCE KARANI SILAS RESPONDENT

*(Being an appeal from the judgement of the Chief Magistrate's
Court (Hon. Adet Vincent Okello, PM) dated 11th March, 2025)*

RULING

1. For determination before this Court is the Applicant/Appellant's Notice of Motion dated 8th April, 2025 brought under sections 1A, 1B & 3A of the Civil Procedure Act, Order 42 Rule 6 of the Civil Procedure Rules, seeking for Orders:-
 1. Spent.
 2. Spent.
 3. This Honourable Court be pleased to stay execution of the Judgment delivered on the 11th March, 2025 by the Honourable Adet Vincent Okello (PM) in Nakuru Civil Suit Number E1136 of 2021 pending the hearing and determination of the Appeal against the said decision.
 4. The costs of this application be provided for.
2. The Application is based on the grounds on the face of the Motion and supported by the Affidavit of the Applicant's director, Harjit Singh Sagoo, sworn on 8th April, 2025.
3. The deponent stated that this Appeal stems from a judgment delivered by Hon. Adet Vincent Okello (PM) in Nakuru Chief Magistrate's Civil Case No. E1136 of 2021 on 11th March 2025, where the trial



Court ordered the Applicant to pay the Respondent herein Kshs. 965,000/- for special damages and Kshs. 500,000/- for general damages for detinue, along with interest and costs.

4. He contends that 30 days stay of execution granted by the trial court is set to lapse on 11th April, 2025, and the Applicant fears immediate execution if a further stay is not granted.
5. He states that he is dissatisfied with the entire decision of the trial court and has already lodged an appeal. It is argued that unless the application for stay of execution is heard urgently and granted, the appeal will be rendered nugatory, and the Applicant will suffer substantial and irreparable loss and damage.
6. He believes the appeal is arguable and has a high chance of success and asserts that the Respondent will not suffer any prejudice if the application is allowed and further that the application has been made without unreasonable delay.
7. He contends that the trial magistrate erred in finding the Applicant liable for detinue and awarding damages that were not specifically proven or pleaded; the magistrate misdirected himself by ordering payment for the cost of the motor vehicle without establishing its value prior to the sale and by awarding Kshs. 500,000/- as general damages for detinue without evidence of wrongful detention.
8. The deponent states that he has applied for certified copies of the typed proceedings and judgment for compiling the record of appeal. He therefore urges that the application be allowed as prayed.
9. Though served, the Respondent who is represented by the firm of Gatonye and Gatonye Advocate did not file any response to the Application. However, Mr. Gatonye Advocate appeared before this Court on 14th May, 2025 and while acknowledging service of the application, stated that the parties agree on the application and suggested that the Applicant deposits the entire decretal sum in a joint interest earning account in the name of both advocates on record for the parties herein.
10. However, when this matter was mentioned on 9th July, 2025, Ms. Kimuge Advocate for the Applicant informed this Court that her client is only able to raise half of the decretal sum in form of a bank guarantee reiterating that his client is unable to raise the entire sum. Mr. Gatonye on the other hand maintained that the entire sum should be deposited as per his earlier suggestion.

Analysis and determination

11. From the material placed before this Court, the only issue for determination is whether an order of stay of execution pending appeal should issue.
12. The principles upon which this Court may grant stay of execution pending appeal are well-settled as enshrined in Order 42 Rule 6(2) of the Civil Procedure Rules which provides that;-
 - “(2) No order to stay of execution shall be made under sub-rule (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.”
13. Accordingly, the Applicant is obliged to satisfy the Court that: -



- i. Substantial loss may result to the applicant unless the order was made;
 - ii. The application was made without unreasonable delay; and
 - iii. Such security as the Court orders for the due performance of such decree or order as may ultimately be binding on him as been given by the applicant.
14. The above elements have been time and again reiterated by superior courts as seen in classic case of *Butt v Rent Restriction Tribunal* [1982] KLR 417 where Madan JA (as he was then) held:-
- “It is in the discretion of the court to grant or refuse a stay but what has to be judged in every case is whether there are or not particular circumstances in the case to make an order staying execution. It has been said that the court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal, if successful from being nugatory, per Brett, LJ in *Wilson v Church* (No 2) 12 Ch D (1879) 454 at p 459. In the same case, Cotton LJ said at p 459:
- “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 nugatory.”
15. On the first consideration whether the application was filed timeously. The judgment of the trial Court in this matter was delivered on 11th March, 2025. The Application herein was filed on 8th April, 2025. Accordingly, the Applicant has moved this Court timeously.
16. On the second condition, the Applicant contends that he will suffer substantial loss if the orders sought are not granted as the Respondents will execute the Decree and attach his properties to his detriment.
17. Though the specific loss was not indicated the Respondent orally challenged the security offered maintaining that the entire decretal sum should be deposited in a joint interest earning Account. In the circumstances, the issue of substantial loss was not contested and therefore, the only issue remaining is security for due performance.
18. In the case of *Arun C. Sharma v. Ashana Raikundalia T/A Rairundalia & Co. Advocates* (2014) eKLR, F Gikonyo J, held that:-
- “The purpose of the security needed under Order 42 is to guarantee the due performance of such decree or order as may ultimately be binding on the Applicant. It is not to punish the judgment debtor ... Civil process is quite different because in civil process the judgment is like a debt hence the Applicants become and are judgment debtors in relation to the respondent. That is why any security given under Order 42 rule 6 of the Civil Procedure Rules acts as security for due performance of such decree or order as may ultimately be binding on the Applicants. I presume the security must be one which can serve that purpose.”
19. This Court notes that the Applicant herein has offered security in form of a Bank Guarantee but the alleged Bank Guarantee has not been annexed to the application herein. In those circumstances, it is deemed that no such security has been offered.
20. Nonetheless, in order to balance the rights of both parties in the circumstances herein, this Court makes the following Orders:-



1. A stay of execution of the Judgment delivered on the 11th March, 2025 in Nakuru Chief Magistrate's Court Civil Suit No. E1136 of 2021 be and is hereby granted pending the hearing and determination of the Appeal.
2. Order 1 (one) above is on condition that the Applicant shall deposit half ($\frac{1}{2}$) of the decretal amount in a joint interest-earning bank account to be held in the names of the Counsel for the Applicant and Counsel for the Respondent within the next thirty (30) days from the date of this ruling.
3. In default of the above condition, the stay of execution shall automatically lapse.
4. Costs of the application to abide the outcome of the Appeal.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 28TH DAY OF JULY , 2025.

PATRICIA GICHOHI

JUDGE

In the presence of:

N/A for Ms. Kimuge for the Applicant

Mr. Gatonye for Respondent

Ruto, Court Assistant

