



**Wachira v Mohamed & another (Civil Appeal E1057 of 2024)
[2025] KEHC 9597 (KLR) (Civ) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9597 (KLR)

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

CIVIL

CIVIL APPEAL E1057 OF 2024

JN MULWA, J

JULY 3, 2025

BETWEEN

MARTIN WACHIRA APPELLANT

AND

MWINYI HAMISI MOHAMED 1ST RESPONDENT

KELVIN ONYANGO ODENDE 2ND RESPONDENT

RULING

1. By a Motion dated 22/10/2024 the Applicant Martin Wachira seeks an order of stay of execution of the trial court's judgment delivered on 12/08/2024 pending hearing and determination of the appeal filed herein.
2. The motion is premised upon provisions of Order 42 Rule 6(2) and (3) of the Civil Procedure Rules 2010 (CPR) and the supporting affidavit sworn by one Nancy Ndiritu Advocate having conduct of the suit on behalf of the applicant. It is her averments that the Record of Appeal has since been filed and that it has high chances of success as it raises arguable points of law as demonstrated in the Memorandum of Appeal dated 11/09/2024. A copy of the decree is hereto annexed as an exhibit and shows a sum of Kshs. 582,000/= the decretal sum as at date of the decree 12/08/2024.
3. In opposing the application, the Respondent filed a replying affidavit sworn on 23/01/2025 by the 1st Respondent admitting filing of the Memorandum of Appeal and the instant motion two months after judgment which he deems to be a delaying tactic and an afterthought. He also depones that the applicant has not met conditions under Order 42 Rule 6 Civil Procedure Rule, and that he is a man of means and would be able to refund the decretal sum should the appeal not be successful, thus objecting to stay orders pending the appeal.



4. Further, the 1st Respondent argues that in the event that the court finds in favour of the applicant 50% of the decretal sum be paid to him.
5. The court has carefully considered the rival arguments by both parties. The memorandum of appeal is dated 11/09/2024 thus negating the respondents' averment that it is not dated. Issues raised therein appertain to material damage to the Appellant's motor vehicle by the Respondents. The matter of liability and quantum of damages are subject of the pending appeal.
6. The trial court held both parties (2nd Respondent and the Applicant) jointly and severally liable, thus 50:50 basis.

I have perused the decree as drawn. Unless overturned on appeal, each party bears 50% liability to the Respondents, and that applies to the quantum of damages.
7. As to the two months delay in approaching the court though not specifically not explained, cannot be said to be inordinate nor delaying tactic in terms of Order 42 Rule 6(2) CPR see the ruling of this court in the following cases: Gladys Jeruto Korir v. Stanbic Bank Kenya Ltd & Another [2024] eKLR; Kenya Shell Ltd v. Benjamin Karuda Kibiru & Others [1982-88] I KAR 1018; James Wangalwa & Another v. Agnes Naliaka Cheseto [2012] eKLR.
8. The purpose of an order of stay of execution is to preserve the subject matter as held in RWW v EKW [2019], so that in the interim, the rights of both parties are safeguarded. This is a power granted to the court so as not to render the appeal nugatory, and thus sufficient security is achieved as stipulated at Order 42 Rule 6 CPR.
9. Having considered the above and the substantial loss and prejudice that may be visited upon the Applicant should the orders sought be denied, this court is persuaded that the status quo in terms of the 50:50 basis be preserved pending the hearing and determination of the appeal.
10. In other words, therefore, an unconditional order of stay of execution is hereby granted to the Applicant to await the hearing and determination of the appeal.
11. On costs, I find it appropriate that each bears own costs of the application.
12. This appeal is transferred to the Civil Appellate Division for directions on the hearing of the pending appeal; to be listed for mention before DR on 24/07/2025.

Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 3RD DAY OF JULY, 2025

.....
JANET MULWA.
JUDGE

