



REPUBLIC OF KENYA



**Nzibo v Nation Media Group Limited & another (Civil Suit E57 of 2020)
[2025] KEHC 12875 (KLR) (Civ) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12875 (KLR)

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

**CIVIL
CIVIL SUIT E57 OF 2020**

JN MULWA, J

SEPTEMBER 18, 2025

BETWEEN

AMB. (DR) YUSUF ABDULRAHMAN NZIBO PLAINTIFF

AND

NATION MEDIA GROUP LIMITED 1ST DEFENDANT

CECIL ODONGO 2ND DEFENDANT

RULING

1. There are two applications before the court for determination.
2. The first Application dated 7/03/2025 is brought by the defendants. They seek orders of stay of execution of the judgment delivered on 24/10/2024 and amended on 12/11/2024 pending hearing and determination of an intended appeal.
3. The second application s dated 11/06/2025 brought by the plaintiff in which he seeks orders allowing the 1st defendants Directors (named) to be detained in prison for disobeying court orders issued by the court on 22/11/2024 with help of the OCS Central police Station, Nairobi in enforcement of the orders.
4. On the motion dated 7/03/2025, directions were taken, parties filed their responses and tendered oral submissions. Ruling is scheduled for delivery on 18/09/2025.
5. The plaintiff's motion dated 11/06/2025, parties were directed to file submissions upon grounds of opposition to the motion dated 1/07/2025 filed by the Defendant.
6. In both applications, there are interim stay orders in place and in force pending determination of the applications.



Application Dated 7/03/2025

7. It is brought pursuant to provisions of Order 42 Rule 6 and Order 51 Rule 1 of the [Civil Procedure Act](#). The defendants seek orders that:-
 1. Spent
 2. That there be a stay of execution of the judgment delivered on 24/10/2024 and amended on 12/11/2024 pending hearing and determination of the application;
 3. That there be a stay of execution of the aforesaid judgment pending the hearing and determination of the appeal.
 4. Costs of the application be provided.
8. In support of the application Sekon Owino, Head of Legal Department at the 1st Defendant's Company swore the affidavit on 7/03/2025 alongside grounds found at its face.
9. The deponent posits that it is the intention of the Defendants to appeal against the entire judgment and towards that, a Notice of Appeal dated 28/10/2024 was duly filed, and a request for proceedings duly made.
10. In addition, the Applicants aver that the party and party bill of Costs was taxed on 24/10/2024 and that the plaintiff have proceeded to obtain warrants of attachment with a view to execute the decree hence the application.
11. Further, the Applicants have shown their willingness and readiness to provide security by way of a bank Guarantee to secure the decretal sum, as the court may determine, adding that they would suffer prejudice should the court deny them the orders sought.
12. In opposition to the application, the Plaintiff/Respondent swore and filed a Replying Affidavit on 28/03/2025 in which he posits that as much as the defendants wish to have stay orders granted against execution of the decree, they have failed to comply with orders of the court requiring them to pull down the articles found to have been defamatory of his character.
13. The Plaintiff depones that the Defendants neglect and failure continues to injure his reputation into his professional standing, dignity, and therefore not deserving of the orders they seek by the application.
14. The Plaintiff further states that the Applicants have not demonstrated any substantial loss or injury to their business, nor that the Respondent would not be able to refund the decretal sum should it be paid to him, stating that he is a man of means and has the ability to pay bank as and when called upon to, urging for dismissal of the application.
15. Both parties by their respective Advocates tendered their oral submissions, which I have carefully considered.

Analysis and Determination

16. Provisions of Order 42 Rule 6(2) of the Civil Procedure Rules underpin requirements for grant of stay orders of execution pending appeal, that-
 - a. The court must be satisfied that substantial loss may result to the applicant unless the order is made and the application has been made without unreasonable delay; and



- b. Such security as the court orders for the due performance of such decree as may ultimately be binding on him has been given by the applicant
 - c. ...
 - d. For the purposes of this rule, an Appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of their Court Notice of Appeal has been given.
17. Additionally, Section 3A of the *Civil Procedure Act* reserves :-
- “the inherent power of the court to make such orders as may be necessary for ends of justice or to prevent abuse of the court”
18. There is already filed by the Applicants a Notice of Appeal that is an intention to appeal against the impugned judgment.
- Considering the application it is safe to state that it was filed without any delay; and a request for proceedings was filed soon after delivery of the judgment. At the time of preparing this ruling, I can confirm that the proceedings are ready for collection by the respective parties. (See the case of Edith Gichungu Koine v. Stephen Njagi Thoithi [2014] eKLR)
19. On substantial loss should the orders sought are denied and execution is levied against the applicants, the Respondent claims that the orders should be denied as they have come to court with unclean hands, by failure to comply with the orders of court to pull down the defamatory articles.
20. Substantial loss need not be monetary only. The Respondent has deponed of his ability to refund the decretal sum if paid to him and the appeal is not successful.
- In the case of JMM v. PM[2018] eKLR the court stated that:-
- “...if it is shown that execution or enforcement would render a proposed appeal nugatory, then a stay can properly be given and 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”.
21. Further, the court in the case of James Wangalwa & Another v. Agnes Naliaka Cheseto [2012]eKLR, held that:-
- “The process of execution in itself does not amount to substantial loss under Order 42 Rule 6 of the CPR as execution is a lawful process.....”
22. As to the absence of a Memorandum of Appeal as raised by the Respondent, Superior Courts have pronounced themselves on the issue. So long as a Notice of Appeal has been filed and request for proceedings made to facilitate filing of the Record of Appeal and also a Memorandum of Appeal, the Court of Appeal rendered itself sufficiently in the case of Equity Bank Ltd v. West Link Mbo Limited [2013]eKLR, commenting on Rule 5(2)(b) of the Court of Appeal Rules which is substantially similar to Order 42 Rule 6(1) of the CPR that an application for stay of execution pending appeal could only be entertained before it after filing of an appeal or a Notice of Intended Appeal.
23. The above therefore removes any doubts as to whether stay of execution orders could be available to an applicant in the absence of a Memorandum of Appeal and or record of appeal. See also the case of Bulози Housing Co-operative Society Ltd v. Captain Francis E. K. Hinga [2012] eKLR to the same effect.



24. The Plaintiff in its oral arguments urged the court if inclined to grant the stay of execution orders to order payment of 50% of the judgment sum to the plaintiff, and the balance to be deposited in an interest earning account pending hearing and determination of the appeal.
25. It further urged that Defendants be compelled to obey and delete the defamatory statements from its forums if stay orders are to be granted.
26. In the Notice of Appeal filed by the Applicants/Defendants, it is stated that the defendants intention is to appeal against the whole decision of the court. Needless to state the order of the court in the impugned judgment includes paragraph 45(e) that directed and ordered the 1st defendant to remove and delete all posts and or publications of offending articles in the defendant's Websites, YouTube and social media platforms.
27. For the reasons stated it would not be proper and appropriate at this stage to direct compliance as urged by the Respondent despite the inherent power donated to the court under section 3A of the Civil Procedure Act whose import is stated above.
28. In the circumstances, and having considered the respective parties' arguments, their affidavits for and in opposition to the application, I am persuaded to find and hold that the Applicants/Defendants have met the threshold for grant of stay of execution orders pending hearing and determination of the appeal.
29. The result is that the defendants application dated 7/03/2025 is allowed on the following terms:
 1. The Defendants/Applicants shall pay to the plaintiff 40% of the judgment sum; plus 40% of the Taxed Costs as per the certificate of Taxation dated 15/04/2025 within 30 days of this ruling.
In default, the stay orders shall lapse automatically.
 2. The Memorandum of Appeal shall be filed within 10 days of this ruling;
and the Record of Appeal shall be filed within 30 days of this ruling.
Parties are hereby notified that this court's proceedings are ready for collection by the parties.
 3. Each party shall bear its own costs of this application.Orders accordingly.

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

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JANET MULWA.

JUDGE

