



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ogoye v Kenya Revenue Authority (KRA) (Tax Appeal E003 of 2025)  
[2025] KEHC 12620 (KLR) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12620 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
TAX APPEAL E003 OF 2025  
A MABEYA, J  
SEPTEMBER 17, 2025**

**BETWEEN**

**VINCENT SHIKUKU OGOYE ..... APPLICANT**

**AND**

**KENYA REVENUE AUTHORITY (KRA) ..... RESPONDENT**

**RULING**

1. On 7/5/2025, the appellant lodged a Motion on Notice dated 19/6/2025 under Order 42 Rule 6 of the *Civil Procedure Act*. He sought the stay of execution of the Judgment of the Tax Appeals Tribunal made on 6/5/2025 pending appeal. He also sought that the agency notice to his bankers, Family Bank for collection of Kshs.85,260,891/- be suspended.
2. On 8/7/2025, when the matter came up ex-parte, I directed that the matter be served for directions on 10/7/2025. I also barred the transfer or withdrawal of any funds from the appellants two accounts at Family Bank.
3. On 10/7/2025, the respondent did not appear. On the strength of an Affidavit of service dated 8/7/2025 by Mercy Diana Awuor Otieno, the Court gave directions that the application be responded to within 5 days for hearing on 16/7/2025 and extended the interim orders. On 16/7/2025, Ms. Nzomo appeared for the respondent and requested for 7 days to respond to the Motion.
4. The Court directed that the Motion be responded to within 7 days and that parties do file and exchange submissions within 30 days. The ruling was set for 1/9/2025 but due to the Vacation, the same was not delivered then.
5. The record shows that despite the said directions, the respondent did not file its response and on 26/7/2025, the appellant filed his own submissions. The application was therefore undefended.



6. The appellant contended that vide the judgment of the Tax Appeals Tribunal ('the Tribunal') of 6/5/2025, he was liable to pay taxes amounting to Kshs.85,260,891/-. That there having been no stay, the respondent proceeded to instruct Family Bank to remit the said funds to it. That he intended to appeal against the said judgment. That he will suffer substantial loss if the stay sought is not granted and the intended appeal will be rendered nugatory.
7. I have considered the Motion and the written submissions on record. It is clear that on 15/7/2025, the appellant lodged his appeal against the said judgment. I do not wish to comment on the efficacy of the said appeal at this juncture. The principles applicable in such applications are well known; an application must demonstrate that he will suffer substantial loss, must give security for the due performance of the order or decree that will ultimately be binding on him and the application must be made timeously.
8. The judgment in question was delivered on 6/5/2025. The current Motion was made on 7/7/2025, a period of 60 days. Since there are no reasons that were advanced in the Supporting affidavit for the delay, the Court is of the opinion that the Motion was not made timeously.
9. On substantial loss, it was averred that unless the stay is granted, the appellant would suffer substantial loss as his appeal will be rendered nugatory. This positive averment was not denied or challenged. The Court has no material on which to doubt the said averment. It is instructive that the appellant swore that he will not be able to conduct business unless the orders sought were granted.
10. On security none was offered. Since however, the application was not opposed though properly served and the respondent appeared, prayed for more time which was granted but chose not to do anything, I will not hold this against the appellant.
11. In the end, I find that the Motion dated 19/6/2025 being undefended, the same is allowed as prayed. Costs in the appeal.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 17<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

