



**Bomet Technical Institute Limited t/a Lomu Investment v Ruto & 22 others;
The County Government Of Bomet (Interested Party) (Environment &
Land Case 78 of 2012) [2025] KEELC 3651 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3651 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND CASE 78 OF 2012**

LA OMOLLO, J

MAY 8, 2025

BETWEEN

**BOMET TECHNICAL INSTITUTE LIMITED T/A LOMU
INVESTMENT PLAINTIFF**

AND

JOEL RUTO 1ST DEFENDANT
ZAKAYO MARITIM 2ND DEFENDANT
ZAKAYO RUTOH 3RD DEFENDANT
JOSEAH SITONIK 4TH DEFENDANT
PHILIMONA SOI 5TH DEFENDANT
JOHN KORGOREN 6TH DEFENDANT
PETER MARITIM 7TH DEFENDANT
STEPHEN RONO ALIAS SEINO 8TH DEFENDANT
ANDREW MARITIM 9TH DEFENDANT
ANTONY BETT 10TH DEFENDANT
BENARD SANG 11TH DEFENDANT
JOHN CHEPKWONY 12TH DEFENDANT
JOLIUS TOWETT 13TH DEFENDANT
RICHARD CHELULE 14TH DEFENDANT
JOSEA MUTAI 15TH DEFENDANT
EDWIN NGENO 16TH DEFENDANT



WILSON SANG	17 TH DEFENDANT
JOHN RUTOH	18 TH DEFENDANT
BERNARD SANG ALIAS KOLONGE	19 TH DEFENDANT
KIBET RUTO	20 TH DEFENDANT
GILBERT RONO	21 ST DEFENDANT
JOHN KORGOREN ALIAS TALIBAN	22 ND DEFENDANT
THE BOARD OF MANAGEMENT, ST MICHAELS PRIMARY SCHOOL, BOMET	23 RD DEFENDANT

AND

THE COUNTY GOVERNMENT OF BOMET INTERESTED PARTY

RULING

Introduction.

1. This ruling is in respect of the 23rd Defendant/Applicant's Notice of Motion application dated 9th October, 2024. The application is expressed to be brought under Order 42 Rules 6 and 8 of the Civil Procedure Rules.
2. The application seeks the following orders;
 - a. Spent
 - b. Spent
 - c. That the Honourable Court be pleased to grant a stay of execution of judgement delivered on 26th September, 2024 at the Environment and Land Court at Kericho in Kericho ELC Case No. 78 of – (sic) Bomet Technical Institute Limited T/A Lomu Investments vs The Board of Management, St Michaels Primary School, Bomet & Others pending the hearing and determination of the intended appeal.
 - d. That cost of the application be in the cause.
3. The application is based on the grounds on its face and the supporting affidavit sworn by one Alice Marinday.

Factual Background.

4. The Plaintiff/Respondent in its Further Further Amended Plaintiff dated 18th May, 2021 sought the following prayers;
 - a. A declaration that the Plaintiff is entitled to exclusive and unimpeded right of possession and occupation of the suit property.
 - b. A temporary injunction restraining the Defendants, whether by themselves, agents, servants or anybody claiming under them howsoever, from further entering, occupying, building, cultivating, leasing, selling, transferring or in any way dealing with the suit property to wit plot No. Bomet Township/270 situated in Bomet Municipality.



- c. A permanent injunction restraining the Defendants, whether by themselves, agents, servants or anybody claiming under them howsoever, from further entering, occupying, building, cultivating, leasing, selling, transferring or in any way dealing with the suit property to wit plot No. Bomet Township/270 situated in Bomet Municipality.
 - d. Vacant possession of the suit property.
 - e. General damages for trespass.
 - f. An order of eviction of the 23rd Defendant from the suit property.
 - g. Costs of this suit together with interest thereon at such rate and for such period of time as the Court may deem fit to grant.
 - h. Any such other or further relief as the Court may deem appropriate.
5. The Interested Party/Respondent filed its statement of Defence and Counterclaim dated 15th May, 2019 where it sought the following orders;
- a. An order for the cancellation of the title deed for Plot No. Bomet Township/270 registered in the name of the Plaintiff (sic) Bomet Technical Institute Limited T/a Lomu Investments.
 - b. A declaration that the Board of Management, St Michael's Primary School is the absolute, sole and legal proprietor of the parcel of land known as Plot No. Bomet Township/270 situated in Bomet Municipality.
 - c. A permanent order of injunction restraining the Plaintiff (now Defendant), his servants, agents, representatives, assigns and heirs from putting up any structures, both temporary and permanent, transferring, planting, grazing or doing any activities on Plot No. Bomet Township/270 to the detriment of St Michael's Primary School.
 - d. Costs of this suit.
6. The 23rd Defendant/Applicant filed its Statement of Defence dated 30th June, 2021 where it denied the averments in the Further Further Amended Plaintiff.
7. The Court delivered its judgement on 26th September, 2024 where it granted the following orders;
- a. It is herein declared that the Plaintiff is entitled to exclusive and unimpeded right of possession and occupation of the suit property to wit Plot No. Bomet Township/270 situated in Bomet Municipality.
 - b. A permanent injunction is herein issued restraining the 23rd Defendant, whether by itself, agents, servants or anybody claiming under them howsoever, from further entering, occupying, building, cultivating, leasing, selling, transferring or in any way dealing with the suit property to wit plot No. Bomet Township /270 situated in Bomet Municipality.
 - c. Within 45 days of this judgement, the 23rd Defendant shall give vacant possession of the suit property to the Plaintiff herein.
 - d. General damages of Kshs. 2,000,000/= (Two million shillings only) shall be paid by the 23rd Defendant to the Plaintiff to compensate it for wrongful entry onto its land.
 - e. Costs of the suit and interest shall be at Court rates.



8. The application under consideration first came up for directions on 21st October, 2024 when the Court directed that it be served upon the Respondents.
9. The application came up for hearing on 11th November, 2024 and the Court deferred its hearing and directed that it be served upon the Interested Party/Respondent.
10. On 11th December, 2024 the Court directed that the application be heard by way of written submissions. On 12th of February 2025, it was mentioned to confirm filing of submissions and reserved for ruling.

The 23rd Defendant/Applicant's Contention.

11. The affidavit in support of the application is sworn by one Alice Marinday. She introduces herself as the head teacher and secretary to the Board of Management St Michaels Primary School Bomet.
12. She contends that the Court delivered its judgement on 26th September, 2024 and the 23rd Defendant/Applicant being dissatisfied with the said judgement filed a Notice of Appeal and requested for certified copies of proceedings.
13. She also contends that the Court in its judgement ordered the 23rd Defendant/Applicant to give vacant possession of the suit parcel within forty-five days which period would lapse on 9th November, 2024. On the said date, the intended appeal would not have been determined.
14. She further contends that at the expiry of the 45 days, the learners in the school would be undertaking both termly and national examinations which exercise is crucial and should not be disturbed.
15. It is her contention that she is apprehensive that the Plaintiff/Respondent may commence eviction and demolition proceedings against the school which is a public school thereby destabilizing the learners and affecting their right to education.
16. It is also her contention that the 23rd Defendant/Applicant has been in place for eleven years and has over 500 learners. She adds that the school serves a large community that includes the Respondents in this matter and if execution proceeds, the entire community will suffer negating the government policy of universal primary education for all.
17. It is further her contention that at the expiry of the forty-five days, the 23rd Defendant/Applicant which was put up with money from public coffers and with support of the parents, will be demolished.
18. She contends that the said demolition will cause irreversible psychological trauma to the children both socially and educationally which may be permanent and/or take time and is not capable of being compensated.
19. She also contends that she has been advised by Counsel for the 23rd Defendant/Applicant that it is not required to furnish security for the appeal as per the provisions of Order 42 Rule 8 of the Civil Procedure Rules.
20. She further contends that their intended appeal will be rendered nugatory if orders of stay are not granted.
21. She ends her deposition by urging the Court to allow the 23rd Defendant/Applicant to exercise its right to appeal.



The Plaintiff/Respondent's Response.

22. In response to the application, the Plaintiff/Respondent filed a Replying Affidavit sworn by one Benard Mutai on 28th October, 2024.
23. He deposes that he is a director of the Plaintiff/Respondent.
24. He also deposes that the 23rd Defendant/Applicant has not demonstrated sufficient cause to warrant the grant of the orders sought.
25. He further deposes that the said application is only meant to delay him from enjoying the fruits of his judgement and adds that the Court's discretion is not designed to assist a person who deliberately seeks to delay the course of justice.
26. It is his deposition that the suit was filed in the year 2012 and the matter was concluded after twelve years.
27. It is also his deposition that the Court in its judgment that was delivered on 26th September, 2024 declared the Plaintiff/Respondent as the owner, gave the 23rd Defendant/Applicant forty-five days to vacate the suit parcel and awarded the Plaintiff/Respondent Kshs. 2,000,000/= as damages for wrongful entry.
28. It is further his deposition that the 23rd Defendant/Applicant has never complied with any of the orders issued by the Court and adds that equity does not aid the indolent.
29. He contends that he is advised by his advocates on record that stay of execution is provided for under Order 42 Rule 6(2) of the Civil Procedure Rules.
30. He also contends that the 23rd Defendant/Applicant has to demonstrate that it stands to suffer substantial loss if orders of stay are not granted. He adds that he is the one who is undergoing loss and damage as he has been unjustifiably denied the enjoyment of his judgement which loss cannot be compensated by way of damages.
31. He further contends that the 23rd Defendant/Applicant has not demonstrated whether its appeal will be rendered nugatory if orders of stay of execution are not granted. They are therefore undeserving of the orders sought.
32. It is his contention that the 23rd Defendant/Applicant has not annexed any Memorandum of Appeal to demonstrate whether the intended appeal has any chances of success.
33. He ends his deposition by stating that the application by the 23rd Defendant/Applicant is a tactical delay meant to delay him from enjoying the fruits of his judgement.

Issues for determination.

34. The 23rd Defendant/Applicant filed its submissions on 3rd February, 2025 while the Plaintiffs/ Respondents filed its submissions on 21st January, 2025.
35. The 23rd Defendant/Applicant submits on the following issues;
 - a. Whether the application was made without unreasonable delay.
 - b. Whether the application will be rendered nugatory and would cause the Applicants irreparable loss if stay is not granted and on provisions such as security as to costs.



- c. Whether the intended appeal is meritorious.
36. With regard to the first issue, the 23rd Defendant/Applicant submits that the application has been brought without unreasonable delay as judgement in the matter was delivered on 26th September, 2024 while the application under consideration was filed on 10th October, 2024.
37. With regard to the second issue, the 23rd Defendant/Applicant relies on Order 42 Rule 6 of the Civil Procedure Rules and while reiterating the averments in its affidavit in support of the application submits that if the eviction proceeds, the learners in the school will be greatly affected.
38. The 23rd Defendant/Applicant relies on Order 42 Rule 8 of the Civil Procedure Rules, the judicial decision of G. N Muema p/a (sic) View Maternity & Nursing Home vs Miriam Wacehim Bishar & another [2018] eKLR and submits that no security for costs is required from the government.
39. With regard to the third issue, the 23rd Defendant/Applicant relies on Kenya Tea Growers Association and another vs Kenya Platers & Agricultural Worker Union Civil Application No. 72 of 2001 and submits that the trial Court erred in its judgement and that its appeal is arguable.
40. The Plaintiff/Respondent submits on the following issues;
- a. Whether the Defendants/Applicants application to stay execution pending appeal is merited.
- b. Who should bear costs of this application.
41. The Plaintiff/Respondent relies on Order 42 Rule 6 (2) of the Civil Procedure Rules and submits that the 23rd Defendant/Applicant has to first demonstrate that it will suffer substantial loss if orders staying execution are not granted.
42. The Plaintiff/Respondent relies on the judicial decision of James Wangalwa & another vs Agnes Naliaka Cheseto [2021] eKLR in support of its submissions.
43. The Plaintiff/Respondent submits that it is the registered owner of the suit parcel and the 23rd Defendant/Applicant trespassed on it.
44. The Plaintiff/Respondent relies on the judicial decisions of Leonard Oseme Karani v Sunflag Textile & Knitwear Mills Limited [2019] KEELRC 1409 (KLR), Gianfranco Manenthi & another vs Africa Merchant Assurance Company Ltd [2019] eKLR and submits that for the Court to grant orders of stay of execution, the 23rd Defendant/Applicant must offer security.
45. The Plaintiff/Respondent relies on the judicial decision of Arun C. Sharma vs Ashana Raikundalia t/a Rairundalia & Co. Advocates & 2 Others [2014] eKLR and submits that the 23rd Defendant/Applicant should be ordered to deposit the sum of kshs. 2,000,000/= which was awarded in the judgement if orders of stay are to be granted.
46. The Plaintiff/Respondent relies on the judicial decision of Absalom Dova vs Tarbo Transporters [2013] eKLR in support of its submissions.
47. With regard to the third issue, the Plaintiff/Respondent submits that the Respondents are not men of straw and the chances of the 23rd Defendant/Applicant recovering the costs paid in the event the appeal succeeds are very high.
48. The Plaintiff/Respondent concludes its submissions by relying on the judicial decision of Patrick Nganga v Gerishon Ngure Mangara; John Muchiri Gachihi (Third Party) [2020] eKLR and urges the Court to dismiss the 23rd Defendant/Applicant's application.



Analysis and Determination.

49. I have considered the application, the response thereto and the submissions. It is my view that the only issue that arises for determination is whether an order for stay of execution of the judgement delivered on 26th September, 2024 should be granted pending the hearing and determination of the intended appeal.
50. The law relating to stay pending Appeal is Order 42 Rule 6 (2) of the Civil Procedure Rules which provides as follows;
- “(2) No order for 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.”
51. In the judicial decision of *RWW v EKW* [2019] eKLR the Court held as follows;
- “The purpose of an application for stay of execution pending an Appeal is to preserve the subject matter in dispute so that the rights of the Appellant who is exercising the undoubted right of appeal
- are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the Court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The Court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.” (Emphasis mine)
52. In *Absalom Dova v Tarbo Transporters* [2013] eKLR it was stated thus:
- “The discretionary relief of stay of execution pending Appeal is designed on the basis that no one would be worse off by virtue of an order of the Court; as such order does not introduce any disadvantage, but administers the justice that the case deserves. This is in recognition that both parties have rights; the Appellant to his Appeal which includes the prospects that the Appeal will not be rendered nugatory; and the decree holder to the decree which includes full benefits under the decree. The Court in balancing the two competing rights focuses on their reconciliation...” (Emphasis mine)
53. The first criterion set under Order 42 Rule 6(2) of the Civil Procedure Rules is that a party seeking stay of execution must file his application without unreasonable delay. Judgement in this matter was delivered on 26th September, 2024 while the 23rd Defendant/Applicant filed its application on 15th October, 2024. I find that the application has been filed without unreasonable delay.
54. The second criterion is that the 23rd Defendant/Applicant must demonstrate that it is bound to suffer substantial loss if orders of stay of execution are not granted.
55. In the judicial decision of *Silverstein v Chesoni* (2002)1 KLR



867 it was held that;

“The issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the Appeal nugatory.”

56. The 23rd Defendant/Applicant contends that if the Court does not issue orders of stay of execution, it is likely to be evicted from the suit parcel.
57. The 23rd Defendant/Applicant submits that it has more than five hundred learners who will be prejudiced if the eviction proceeds.
58. It is the 23rd Defendant/Applicant's submissions that its premises were built with money from public coffers and funds from parents and adds that it will suffer substantial financial loss that may not be compensated in the event of success of appeal.
59. In response, the Plaintiff/Respondent contends that it stands to suffer substantial loss if orders of stay of execution are granted as it has been deprived of the suit property for a period of over twelve years.
60. The Plaintiff/Respondent also submits that the 23rd Defendant/Applicant has not sufficiently demonstrated that it will suffer substantial loss if orders of stay of execution are not granted.
61. In the judicial decision of *Karungu v Masira & another* (Environment & Land Case 540 of 2016) [2024] KEELC 5683 (KLR) (25 July 2024) (Ruling) the Court held as follows;

“It should also be noted that where there is an order of eviction, it is not enough to say that a party shall be evicted, as that is a decree that was issued after the parties have been heard and a case is determined. A mere mention of imminent eviction is not proof of substantial loss.” (Emphasis mine)

62. In the above cited judicial decision, the Court held that imminent eviction is not proof of substantial loss. That being the case, the 23rd Defendant/Applicant has not demonstrated that it will suffer substantial loss.
63. On the issue of security for due performance of the decree, the Court in the judicial decision of *Kenya Commercial Bank Limited vs Sun City Properties Limited & 5 Others* [2012] eKLR held as follows;

“in an application for stay, there are always two competing interests that must be considered. These are that a successful litigant should not be denied the fruits of his judgment and that an unsuccessful litigant exercising his undoubted right of appeal should be safeguarded from his appeal being rendered nugatory. These two competing interests should always be balanced in a bid to balance the two competing interests, the Courts usually make an Order for suitable security for the due performance of the Decree as the parties wait for the outcome of the Appeal. I do not see, why the same should not be applicable in this case.”



64. In the judicial decision of *Karungu v Masira & another* (Environment & Land Case 540 of 2016) [2024] KEELC 5683 (KLR) (25 July 2024) (Ruling) the Court further held as follows;

“In the interest of justice, I therefore grant stay of execution pending appeal on condition that the Applicant deposits Kshs. 500,000/= in a joint interest earning account of the Advocates for the Plaintiff and the 1st Defendant within 30 days failure to which the order lapses.”

65. In the present matter the 23rd Defendant/Applicant submits that no security is required from the government and relies on Order 42 Rule 8 of the Civil Procedure Rules which provides as follows;

“No such security as is mentioned in rules 6 and 7 shall be required from the Government or where the Government has undertaken the defence of the suit or from any public officer sued in respect of an act alleged to be done by him in his official capacity.”

66. On security for costs, the Plaintiff/Respondent submits that the 23rd Defendant/Applicant should deposit the sum of Kshs. 2,000,000/= being general damages for trespass which were awarded in the judgement if an order for stay is granted.

67. This Court notes that on one hand, the 23rd Defendant/Applicant contends that if orders of stay of execution are not granted it will suffer substantial loss while on the other hand it is not willing to offer security for costs.

68. In the judicial decision of *Barnabas East Africa v County Government of Mombasa & 2 others* (*Environment and Land Constitutional Petition 29 of 2022*) [2024] KEELC 1361 (KLR) (5 March 2024) (Ruling) the Court held as follows;

38. Therefore, in the interest of justice and fairness, it behooved the Applicant herein to furnish security as stipulated by the law. This was not done. The Applicant was unwilling to pay any further monies towards this matter as their claim in the appeal was that they have already settled the entire decretal amount. It was their argument that since they were not challenging the decision of the trial Court, there was no need to deposit security. They also contended that they were only challenging the legality of the warrants which in any case would absolve them from the parameters of the provision of Order 42, Rule 6 (2b) of the Civil Procedure Rules, 2010. At this point, it appears as though the Applicants want to have their cake and still eat it through hiding under the curtains of the Provision of Order 42 Rule 8 of the Civil procedure Rules, 2010. On the one hand they argue that where stay is not granted, they will suffer substantial loss. On the other hand, they are unwilling to comply with the requirements under the provision of Order 42, Rule 6.

39. Stay of execution is exactly what it states. It is an order of the Court barring a Decree Holder from enjoying the fruits of his Judgment pending the determination of some issue in contention. It matters not whether the issue in contention is the amount awarded in the Judgment Debt, or liability or legality of the extracted warrants as in this case. Where a party seeks to stay execution, the Court must be guided by the parameters set out in Order 42 Rule 6. While this Court appreciates that the subject of the appeal is whether the decretal amount was paid or not and hence the unwillingness of the Applicant to deposit security for the outstanding judgment debt, at this interim stage, it will



only limit itself to the preconditions for granting stay of execution where there exists a Judgment legally entered in favour of one party against the other. Thus, it matters not at this stage whether they had paid the full amount or not, that is a matter for consideration at the appeal stage. It must satisfy the requirement for security.”

69. In the judicial decision of Paul Kipsang Kosgei v National Industrial Training Authority & another; Cabinet Secretary, Ministry of Labour & Social Services (Interested Party) [2021] eKLR the Court also held as follows;

“From the foregoing, it is clear that the 1st Respondent, and by extension the 2nd Respondent, would not be exempt from the requirement to provide security for the appeal, as it is a body corporate with capacity to sue and be sued, and to own and dispose of property in its corporate name... (Emphasis mine)

I however also take cognizance of the fact that the Petitioner is the holder of a valid decree and is entitled to benefit from the fruits of the judgment made in his favour. As was stated by the Court in Board of Trustees National Social Security Fund v Caroline Wanjiru Karori (supra), the Courts must balance the interests of both parties. Again as was held in Machira T/A Machira & Co Advocates v East African Standard (No 2) [2002] KLR 63:

“To be obsessed with the protection of an appellant or intending appellant in total disregard or flitting mention of the so far successful opposite party is to flirt with one party as crocodile tears are shed for the other, contrary to sound principle for the exercise of a judicial discretion. The ordinary principle is that a successful party is entitled to the fruits of his judgement or of any decision of the Court giving him success at any stage. That is trite knowledge and is one of the fundamental procedural values which is acknowledged and normally must be put into effect by the way applications for stay of further proceedings or execution, pending appeal are handled. In the application of that ordinary principle, the Court must have its sight firmly fixed on upholding the overriding objective of the rules of procedure for handling civil cases in Courts, which is to do justice in accordance with the law and to prevent abuse of the process of the Court.”

70. The purpose of security as provided for under Order 42 Rule 6 of the Civil Procedure Rules is to guarantee the due performance of the decree. Therefore, a party seeking orders of stay of execution must give security.
71. The Constitution of Kenya provides for national values which include the rule of law. By rule of law we mean equality before the law and equal protection of the law. I do not agree that a party to a suit should wave the government card, merely because it is funded by government, in the hope of receiving preferential treatment to the detriment of the other party.
72. What is meant by government anyway? In my view, government means a system of organizing power. In Kenya that system is seen at the national level and in the counties. At the national level we have the Executive, Legislature and the Judiciary. In the counties, we have County Assembly and the County Executive. The fact that an institution receives money from government does not make it government.
73. As was held in Paul Kipsang Kosgei v National Industrial Training Authority & another; Cabinet Secretary, Ministry of Labour & Social Services (Interested Party) (Supra), the 23rd Defendant/Applicant as a public school has capacity to sue and be sued and to dispose and/or acquire property



in its own name. I find that it does not fall within the exemptions contemplated under the provisions of Order 42 Rule 8 of the Civil Procedure Rules. As such, it must provide security for the due performance of the decree.

74. In the judicial decision of Issack *v Margintons Limited (Civil Appeal 140 of 2023)* [2024] KEHC 3813 (KLR) (12 April 2024) (Ruling) the Court held as follows;

“

“23. The issue of adequacy of security was dealt with by the Court of Appeal in *Nduhiu Gitahi vs. Warugongo* [1988] KLR 621; 1 KAR 100; [1988-92] 2 KAR 100 where the Court of Appeal expressed itself as follows:

“The process of giving security is one, which arises constantly. So long as the opposite party can be adequately protected, it is right and proper that security should be given in a way, which is least disadvantageous to the party giving the security. It may take many forms. Bank guarantee and payment into Court are but two of them. So long as it is adequate, then the form of it is a matter, which is immaterial. In an application for stay pending appeal the Court is faced with a situation where judgment has been given. It is subject to appeal. It may be affirmed or it may be set aside. The Court is concerned with preserving the rights of both parties pending that appeal. It is not the function of the Court to disadvantage the Defendant while giving no legitimate advantage to the Plaintiffs. It is the duty of the Court to hold the ring even-handedly without prejudicing the issue pending the appeal. For that purpose, it matters not whether the Plaintiffs are secured in one way rather than another. It would be easier for the Defendants or if for any reason they would prefer to provide security by a bank guarantee rather than cash. There is absolutely no reason in principle why they should not do so...The aim of the Court in this case was to make sure, in an even-handed manner, that the appeal would not be prejudiced and that the decretal sum would be available if required...” [Emphasis mine]

Disposition.

75. In granting orders of stay of execution, the Court has to strike a balance between the competing interests of the judgment debtor and the judgment creditor by ensuring that the appeal is not rendered nugatory while at the same time ensuring that the judgment creditor is not impeded from enjoying the fruits of its judgement.
76. Taking into account circumstances of this case and the interest of justice, the application dated 9th October, 2024 is allowed in the following terms;
- a. Pending hearing and determination of the appeal filed by the 23rd Defendant/Applicant herein, there shall be a stay of execution of the entire judgement of this Court delivered on 26th September, 2024.
 - b. The 23rd Defendant/Applicant shall provide a bank guarantee of Kshs. 2,000,000/= from a reputable bank within thirty days of this ruling.
 - c. In the event of failure to comply with (b) above, the orders of stay shall stand vacated.
 - d. The costs of this application shall be in the cause.
77. It is so ordered

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 8TH DAY OF MAY, 2025.



L. A. OMOLLO

JUDGE.

In the presence of: -

Miss Orege for the 23rd Defendant/Applicant.

Mr. Okiro for the Plaintiff/Respondent.

Court Assistant; Mr. Joseph Makori.

