



**Goodwin v Gichuhi (Civil Appeal E086 of 2024)  
[2025] KEHC 13773 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13773 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
CIVIL APPEAL E086 OF 2024  
M THANDE, J  
SEPTEMBER 30, 2025**

**BETWEEN**

**UTE HERTHA GOODWIN ..... APPELLANT**

**AND**

**JOSEPHINE WANJIRU GICHUHI ..... RESPONDENT**

**RULING**

1. By a Notice of Motion dated 17.10.24, the Appellant seeks the following orders:
  1. Spent.
  2. That this Honourable Court be pleased to Order a Stay of Execution of the Judgment entered on 20<sup>th</sup> June 2024 and the consequential Decree and anticipated Warrants of Arrest per court proceedings of 16.10.24 before Gon. Grace Mutemi R. M., pending the hearing and determination of this application.
  3. That this Honourable Court be pleased to order a Stay of Execution of the Judgment entered on 20<sup>th</sup> June 2024 and the consequential decrees pending hearing of the intended appeal Malindi HCCA No. 86/24 Ute Goodwin v Josphine Wanjiru.
  4. That the costs of this application be provided for.
2. The Appellant is aggrieved by the judgement of the trial court and has already filed an appeal against the said decision raising triable issues; that the Appellant states that the Respondent is in the process of executing the judgment through a notice to show cause allowed on 16.10.24 and that warrants of arrest could be extracted and enforced any moment; that the Appellant is an elderly lady likely to suffer substantial loss if arrested and detained in jail and the appeal risks being rendered nugatory; that the Appellant is reasonably apprehensive that any payment is ordered as a condition for stay, is likely to be utilized and alienated by the Respondent; that recovery of the same will be an arduous task.



3. The Respondent opposed the application vide a replying affidavit sworn on 10.3.25 and denied the allegations by the Respondent. She urged that in the event the Application is allowed then the decretal sum ought to be deposited in court as security including the accrued interest.
4. The jurisdiction of the Court to grant stay of execution is set out in Order 42 Rule 6 of the Civil Procedure Rules. Sub-rule 2 provides:
  - (2) No order for stay of execution shall be made under subrule (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 order for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
5. The law requires that an application for stay of execution be filed without unreasonable delay. In the instant case, the decision of the lower court by which the Applicant is aggrieved, was made on 20.6.24 while the Application is dated 17.10.24, almost 4 months later. While there has been some delay, the same cannot be said to be inordinate.
6. On substantial loss, the Appellant contends that she is an elderly woman who would suffer immensely committed to civil jail in execution of the decree. Further, that the Respondent has no known source of income and may be unable to refund the decretal amount if the appeal succeeds, thereby occasioning substantial loss to the Appellant. The Respondent is of the view that the decretal sum be deposited in Court as a condition for stay.
7. In the case of *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] eKLR, Gikonyo, J. had this to say on substantial loss:
 

The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal. This is what substantial loss would entail, a question that was aptly discussed in the case of *Silverstein v. Chesoni* [2002] 1KLR 867, and also in the case of *Mukuma V Abuoga* quoted above. The last case, referring to the exercise of discretion by the High Court and the Court of Appeal in the granting stay of execution, under Order 42 of the CPR and Rule 5(2) (b) of the Court of Appeal Rules, respectively, emphasized the centrality of substantial loss thus:

“...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.”
8. In the present case, the Appellant has said that execution by means of her committal to civil jail is imminent and this would cause her irreparable loss on account of her advanced age. I am persuaded that the appeal may be rendered nugatory if stay is not granted and that substantial loss may be occasioned if the orders sought are not granted. I accordingly find that it is necessary to preserve the status quo to prevent substantial loss to the Appellant, and to preserve the substratum of the appeal.
9. Further, access to justice is a right enshrined in Article 48 of *the Constitution* and extends to the right to appeal. As such, a party's right to appeal should be protected by ensuring that such party's appeal is not rendered nugatory. In exercising its discretion, the court must 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.



10. The Court has formed the opinion that there is no overwhelming hinderance to grant the stay sought herein. Having said that, I am mindful of the fact that the impugned decision was delivered on 20.6.24 and the Appellant has had more than ample time to obtain the typed proceedings. It is therefore imperative that the matter is disposed of expeditiously.
11. In the end I find that the Application succeeds. Stay of execution pending appeal is hereby granted on the following terms:
  - i. The record of appeal shall be filed and served by 14.10.25.
  - ii. The entire decretal amount shall be deposited in Court by 14.10.25.
  - iii. In default of orders i) and ii), the stay granted herein shall automatically lapse.
  - iv. The costs of this application shall abide the outcome of the appeal.

**DATED, SIGNED AND DELIVERED IN MALINDI THIS 30<sup>TH</sup> DAY OF SEPTEMBER 2025**

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**M. THANDE**  
**JUDGE**

