



REPUBLIC OF KENYA



Board of Management Kagumo Teachers College v Wachira & 2 others (Suing as Chairman, Secretary and Treasurer of KNTC Investment Group) (Civil Appeal E020 of 2025) [2025] KEHC 14088 (KLR) (8 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14088 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL APPEAL E020 OF 2025
DKN MAGARE, J
OCTOBER 8, 2025**

BETWEEN

BOARD OF MANAGEMENT KAGUMO TEACHERS COLLEGE ... APPELLANT

AND

SUSAN WANGUI WACHIRA 1ST RESPONDENT

MARK GICHUHI GITUKU 2ND RESPONDENT

MOSES RUITA KANARO 3RD RESPONDENT

**SUING AS CHAIRMAN, SECRETARY AND TREASURER OF KNTC
INVESTMENT GROUP**

RULING

1. This is a ruling over the Summons Application dated 17.6.2025. The prayers sought are as follows: -
 - a. Spent
 - b. There be stay of execution of the Judgment and Decree issued on 2.4.2025 in Nyeri CMCC No. E040 of 2023 pending the hearing and determination of the appeal.
2. The grounds upon which the application is made is that the appeal raised serious legal and factual issues and the Appellant was a public institution that would suffer irreparable loss and was willing to offer security.
3. The application was also supported by the affidavit of Margaret Njeri Mbugua sworn on 17.4.2025. It was deposed that the Respondent was likely to proceed with execution. That decretal sum of Ksh. 1,054,448.85/= would not be recoverable.



4. The Respondent filed grounds of opposition dated 10.5.2025. The application according to the grounds of opposition was incompetent, fatally defective and an abuse of the court process.

Submissions

5. The Applicant submitted that they had achieved the threshold for granting stay of execution as there was demonstrated substantial loss. They relied inter alia on *Kenya Shell Ltd v Benjamin Karuga Kibiru & Another* (1986) KLR 410 to submit that the Applicant had proved the grounds to be granted stay of execution.
6. It was further submitted that the appeal would be rendered nugatory upon execution and the decretal sum would be irrecoverable.
7. On the part of the Respondents in their submissions dated 18th July 2025, it was submitted that the appellant had not met the threshold for grant of stay of execution as per the provisions of Order 42 Rule 2 (6) of the Civil Procedure Rules.
8. Further, they submitted that there was no proof of any substantial loss and an arguable appeal. Reliance was placed inter alia upon the case of *Samvir Trustee Limited v Guardian Bank Ltd* HCC No 795 of 1997.
9. The Respondents also submitted that the appeal had no chances of success as the claim was admitted by the Appellant.

Analysis

10. The principles guiding the grant of a stay of execution pending appeal are well settled. These principles are provided for under Order 42 rule 6(2) of the Civil Procedure Rules which provides:

“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 orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
11. Further to the grounds on substantial loss and security, I understand that stay may only be granted for sufficient cause and that the court in deciding whether or not to grant the stay underscores the overriding objective stipulated in sections 1A and 1B of the *Civil Procedure Act*. The court is thus enjoined to give effect to the overriding objective in the exercise of its powers under the *Civil Procedure Act* or in the interpretation of any of its provisions.
12. Section 1A(2) of the *Civil Procedure Act* provides that “the Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective” while under section 1B some of the aims of the said objectives are; “the just determination of the proceedings; the efficient disposal of the business of the Court; the efficient use of the available judicial and administrative resources; and the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties.”
13. Therefore, an applicant seeking stay of execution of a decree or order pending appeal is obliged to satisfy the conditions set out in Order 42 Rule 6(2), aforementioned: namely (a) that substantial loss



may result to the applicant unless the order is made, (b) that the application has been made without unreasonable delay, and (c) that such security as the court orders for the due performance of such decree or order as may ultimately be binding on the applicant has been given. See *Antoine Ndiaye v African Virtual University* [2015] eKLR.

14. I have to ascertain whether the Appellant has demonstrated loss that it stands to suffer if the order of stay is not granted. From the affidavit in support of the application, it is deposed that should the order be declined, the Appellant stands to suffer substantial damage after execution takes place. The Respondent on the other hand strongly argues that the Applicant has not demonstrated substantial loss to warrant the grant of stay as the appeal is not arguable.

15. Substantial loss for purposes of Order 42 rule 6 of the Civil Procedure Rules was discussed in *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] eKLR, that:

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. 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 ... 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.”

16. Having considered the application vis-à-vis the response thereto, I am of the considered view that the appellant has demonstrated substantial loss. There is no assurance that the decretal amount will be available if it is taken up pending the determination of the appeal should the appeal be successful. In the case of *G. N. Muema p/a(sic) Mt View Maternity & Nursing Home vs Miriam Maalim Bishar & Another* [2018] eKLR, the court held as follows:-

“It was the considered view of this court that substantial loss does not have to be a lot of money. It was sufficient if an applicant seeking a stay of execution demonstrated that it would have to go through hardship such as instituting legal proceedings to recover the decretal sum if paid to a respondent in the event his or her appeal was successful. Failure to recover such decretal sum would render his appeal nugatory if he or she was successful.”

17. Similarly, the Court in *RWW v EKW* [2019] eKLR, considered the purpose of a stay of execution order pending appeal, in the following words:

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.

9. Indeed to grant or refuse an application for stay of execution pending appeal is discretionary. The Court when granting the stay however, must balance the interests of the Appellant with those of the Respondent.



18. This application was filed timeously. However, I also have to consider whether security for the decretal sum should be furnished. I am inclined to find that security for the due performance of the decree herein is essential to protect the rights of the successful Respondents pending the determination of the appeal. The Appellant has conceded that they are willing to offer such security for the decretal amount. Therefore, the application is merited.

Determination

19. The upshot of the foregoing is that I allow the Notice of Motion dated 17.4.2025 as follows:
- a. There be stay of execution of the Judgment and Decree in Nyeri CMCC No. E040 of 2023 dated 2.4.2025 pending the hearing and determination of the appeal.
 - b. The Applicant shall deposit the entire decretal amount of Kshs. 1,054,448.85 in court within 30 days.
 - c. The court was unable to address the question of jurisdiction, which parties must address before the appeal is admitted.
 - d. Costs shall abide the outcome of the appeal.
 - e. Directions on 17.11.2025.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 8TH DAY OF OCTOBER, 2025.

Ruling delivered through Microsoft Teams Online Platform.

KIZITO MAGARE

JUDGE

In the presence of:-

Mr. Muthuri for the Appellant/Applicant

Mr. Wahome Gikonyo for the Respondent

Court Assistant – Michael

