



REPUBLIC OF KENYA



**KENYA LAW**  
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**BOM Kisima Secondary School & another v Theuri (Civil Appeal  
E131 of 2025) [2025] KEHC 14123 (KLR) (6 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14123 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL APPEAL E131 OF 2025  
SM GITHINJI, J  
OCTOBER 6, 2025**

**BETWEEN**

**BOM KISIMA SECONDARY SCHOOL ..... 1<sup>ST</sup> APPELLANT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> APPELLANT**

**AND**

**EPHANTUS THEURI ..... RESPONDENT**

**RULING**

1. For determination is the Notice of Motion dated 20/6/2025 under Sections 1A, 1B, 3A & 63 of the [Civil Procedure Act](#), Order 42 Rule 6 and Order 51 Rule 1 of the [Civil Procedure Rules](#), seeking that:
  1. Spent
  2. Spent
  3. This Honourable Court be pleased to issue an Order for stay of execution of the judgment and decree in Meru Small Claims Court Case No. E146/25 pending the hearing and determination of this Appeal.
  4. The costs of this application be costs in the cause.
2. The application is predicated on the grounds that the appeal has high chances of success, and the Respondent is actively in the process of executing the decree, which will render the whole substratum of the Appeal nugatory. The Applicant is a Government institution and therefore no security is required by virtue of Order 42 Rule 8 of the [Civil Procedure Rules](#). The application has been brought without undue delay and in utmost good faith and the Respondent will not suffer any prejudice if it is allowed.



3. The Respondent swore a replying affidavit on 15/7/2025 in opposition to the application. He faulted the Applicant for failing to 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. In his view, the Applicant was a body corporate with the capacity to sue or be sued, and it could therefore not hide under Order 42 Rule 8 of the [Civil Procedure Rules](#) not to furnish security. He was however inclined to grant of stay on condition that the decretal sum is deposited in a joint interest earning account pending the hearing and determination of the appeal.
4. The application was canvassed by way of written submissions which were only filed by counsel for the Respondent.

### Determination

5. Order 42 Rule 6 (2) of the [Civil Procedure Rules](#) provides as follows;
  - “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.”
6. I am guided by the holding of the Court of Appeal in [Butt v Rent Restriction Tribunal](#) [1979] eKLR that;
  - “It is in the discretion of the court to grant or refuse a stay but what has to be judged in every case is whether there are or not particular circumstances in the case to make an order staying execution. It has been said that the court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal, if successful from being nugatory, per Brett, LJ in [Wilson v Church \(No 2\)](#) 12 Ch D (1879) 454 at p 459.”
7. The application was filed on 27/6/2025 while the impugning judgment was delivered on 22/5/2025. That delay of less than a month cannot be said to be inordinate and unreasonable.
8. I appreciate the Respondent’s willingness to grant of a conditional stay upon deposit of the entire decretal sum in a joint interest earning account.
9. Conversely, the Applicant has improperly invoked the provisions of Order 42 Rule 8 of the [Civil Procedure Rules](#), to escape its obligation to furnish security for the due performance of the decree, under the pretext that it is a Public Institution which relies on funding from the Government.
10. Order 42 Rule 8 of the [Civil Procedure Rules](#) provides that;
  - “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.”



11. In addressing the question whether a public school enjoys the exception under Order 42 Rule 8 of the Civil Procedure Rules, the court (J.N Kamau J) in Board of Governors, Friends School Kaimosi Boys v Shikoli t/a Mildred Ms Stores [2023] KEHC 24300 (KLR) espoused that;

“26. Paragraph 1 of the Fourth Schedule of the Basic Education Act No 14 of 2013 states that: - The Board of Management shall be a body corporate with perpetual succession and a common seal, and shall in their corporate names, be capable of:-

- a. suing and being sued;
- b. taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- c. borrowing, lending and granting money;
- d. entering into contracts; and
- e. doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

27. It was clear from the aforesaid provision that the Appellant was not Government and could not therefore benefit from the exemptions in Government Proceedings Act cap 40 (Laws of Kenya) and that all the conditions under Order 42 Rule 6(2) of the Civil Procedure Rules without exception were inapplicable herein.

28. This court therefore determined that the appellant would furnish security in the form of money to safeguard the Respondent’s interests and/or her fruits of judgment in the event the Appeal herein was not successful.”

12. The Applicant cannot therefore hide under the veil of Order 42 Rule 8 of the Civil Procedure Rules, to circumvent the requirement to provide security for the due performance of the decree.

13. In striking a balance between the Applicant’s undoubted right to appeal against the Respondent’s right to enjoy the fruits of his lawful decree, I will allow the application dated 20/6/2025 in the following terms;

1. Stay of execution of the judgment and decree in Meru Small Claims Court Case No. E146/2025 is hereby granted, pending the hearing and determination of the appeal herein, on condition that;
  - i. The Applicant shall deposit the entire decretal sum of Ksh. 386,000 in a joint Advocates’ interest earning account within 30 days from the date hereof.
  - ii. The Applicant to compile, file and serve the Record of Appeal within 45 days from the date hereof.
  - iii. In default of any of the aforementioned conditions, the stay hereinabove granted shall lapse, and the Respondent shall be at liberty to execute.

Mention on 14/11/2025.

**DATED AND DELIVERED AT MERU THIS 6<sup>TH</sup> OCTOBER, 2025**



**S. M. GITHINJI**

**JUDGE**

Appearances:-

Mr. Mwangi Kaugu for the Respondent

Mr. Mugambi for the Appellant - Absent

