



**Gende Company Limited v Ogola & another (Suing as the Administrators of the Estate of Evans Omondi Mahero) (Civil Appeal E061 of 2025) [2025] KEHC 13615 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13615 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CIVIL APPEAL E061 OF 2025  
DK KEMEL, J  
OCTOBER 2, 2025**

**BETWEEN**

**GENDE COMPANY LIMITED ..... APPELLANT**

**AND**

**CAROLINE ADHIAMBO OGOLA ..... 1<sup>ST</sup> RESPONDENT**

**JANE APONDI MAHERO ..... 2<sup>ND</sup> RESPONDENT**

**SUING AS THE ADMINISTRATORS OF THE ESTATE OF EVANS OMONDI MAHERO**

**RULING**

1. The Appellant/Applicant has filed a Notice of Motion dated 26/8/2025 seeking principally for an order of stay of execution of the judgment in Ukwala CMCC No. E039 of 2023 (Caroline Adhiambo Ogola & Jane Apondi Mahero (Suing as the administrators of the Estate of Evans Omondi Mahero) Vs Tugende Company Limited pending the hearing and determination the appeal. It also seeks for costs.
2. The application is supported by the grounds set out thereunder and by the supporting affidavit of Miriam Maina, the legal officer of Sanlam Insurance Company Ltd who are the Appellant's Insurers. The Appellant's gravamen is inter alia; that the Appellant has lodged an appeal which is arguable; that the Lower Court judgment was rendered on 29/7/2025 in which the Appellant is aggrieved as the amounts ordered by the trial court in the sum of Kshs4,974,050/= is excessive in the circumstances; that the Appellant stands to be greatly prejudiced and will suffer substantial loss if execution of the judgment proceeds; that the Respondents are persons of unknown means and that the Appellant is apprehensive that if the decretal sums are paid out and if the appeal succeeds in the end, the same will be an academic exercise as the Respondents will not be in a position to refund the monies; that the Appellant seeks for stay of execution of the decree pending the appeal in order to preserve the subject matter of the appeal; that the Appellant is ready and willing to furnish security for the due performance



of the decree that might be binding upon it in the form of an insurance bond or bank guarantee or any other form that the court may deem fit as a condition for stay of execution; that the application has been brought without undue delay; that the Respondents will not suffer any prejudice if the orders are granted.

3. The Respondents opposed the application and filed a replying affidavit sworn on 8/9/2025 by the 1<sup>st</sup> Respondent Caroline Adhiambo Ogola wherein she deponed or averred inter alia; that she is not opposed to the application for stay of execution on condition that the Appellant deposits the decretal sums in a joint interest earning account pending the appeal; that the Respondents are willing to be patient as long as the court compels the Appellant to deposit real money instead of the proposed bank guarantee.
4. The application was canvassed by way of written submissions. However, at the time of writing the ruling none of the parties had complied.
5. I have given due consideration to the application, rival affidavits. It Is not in dispute that the Applicant has since lodged an appeal which is now pending determination and that the lower court has already rendered a judgement in which the applicant is aggrieved. I find the issue for determination is whether the application has merit.
6. It is noted that the application is premised under Order 42 Rule 6(1) and (2) which requires the applicant to satisfy the conditions imposed therein before it can be considered for an order of stay of execution. The same provides as follows:

“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.”

7. On whether the application has been filed without undue delay, it is noted that the impugned judgment was delivered by the trial court on 29/7/2025 vide Ukwala PMCC No. E039/2023 (Caroline Adhiambo Ogola & Jane Apondi Mahero (suing as the administrators of the Estate of Evans Omondi Mahero Vs. Tugende Company Ltd). It is clear that the appeal was lodged within the stipulated period of thirty days right of appeal. The application was thus filed within 27 days after the judgment was delivered. I am satisfied that there was no inordinate delay in the circumstances. I find that the Applicant has satisfied this condition.
8. On whether substantial loss may result to the applicant if the stay is not granted, it is noted that the decretal sum is indicated as Kshs4,974,050/= which is a tidy sum during these hard-economic times and that the execution is likely to paralyze the Applicant somewhat. I am aware that the Respondents are entitled to enjoy the fruits of their judgement since they are the victorious litigants while on the other hand the Appellant is also entitled to access justice and to ventilate its appeal now pending before this court. The applicant has averred that the Respondents are persons of straw and therefore it is apprehensive that they might not manage to refund the colossal amounts which would have been paid to them. It is also noted that the Respondents upon being served failed to respond on the aspect that they are persons without means. It was the Appellant’s concern that its appeal will be rendered nugatory if it succeeds in the end and yet fail to get the refund of the monies from the Respondents. Hence, there is a likelihood that the Applicant stands to suffer loss in the event of success of its appeal. In the premises, I must give it to the Applicant that it stands to suffer loss if the order of stay is not granted and that its pending appeal will be rendered nugatory in the end. It is also instructive that the



Respondents do not object to an order of stay being granted to the Appellant as long as the Appellant deposits the decretal sums into a joint interest earning account in the names of the advocates for the parties.

9. As regards the issue of security, it is noted that the Applicant has indicated that it is ready and willing to provide security for the due performance of the decree which will ultimately be binding upon it. The Appellant has proposed to avail an insurance bond or a bank guarantee or abide by any order issued by the court. The Respondents on their part, have indicated that they do not object to an order of stay of execution provided that the Appellant deposits the decretal sums into a joint interest earning account in the names of both advocates. Further, the Respondents maintained that they are opposed to the deposit of an insurance bond/bank guarantee as the same are not synonymous with real money. Looking at the rival contentions regarding the issue of security, it is my considered view that the issue of deposit of an insurance bond/bank guarantee has some challenges in that most bank guarantees have specific timelines for them to mature or to be realized and further they do not earn any interest. Hence the proposal by the Respondent appears to be reasonable in that the parties will have earned some interest from the deposit. Again, the Appellant seemed to suggest that it is ready and willing to abide with any condition to be imposed by court. In the circumstances, it is my finding that an order that the decretal sum be deposited in a joint interest earning account will take care of the concerns of the parties herein.
10. In the result, it is my finding that the Appellant's application dated 26/9/2025 has merit. The same is allowed in the following terms:
  - a. An order of stay of execution of the decree in Ukwala PMCC E039 of 2023 Ukwala CMCC No. E039 of 2023 (Caroline Adhiambo Ogola & Jane Apondi Mahero (Suing as the administrators of the Estate of Evans Omondi Mahero) Vs Tugende Company Limited is hereby granted upon the Applicant depositing the entire decretal sums plus assessed costs into a joint interest earning account in the names of both Advocates herein within forty-five (45) days from the date hereof failing which the stay shall lapse.
  - b. The costs of the application shall abide in the appeal.  
Orders accordingly.

**DATED AND DELIVERED AT SIAYA THIS 2<sup>ND</sup> DAY OF OCTOBER, 2025.**

**D. KEMEI**

**JUDGE**

In the presence of:

M/s Bitok.....for Appellant/Applicant.

Muriuki.....for Respondents.

Okumu.....Court Assistant.

