



**Martim v Koskei & another (Suing as the Legal Representative
of the Estate of the Late Selah Nyokabi Kayuni) (Civil Appeal
E141 of 2024) [2025] KEHC 14560 (KLR) (16 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14560 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL E141 OF 2024
HI ONG'UDI, J
OCTOBER 16, 2025**

BETWEEN

KIPRONO MARTIM APPELLANT

AND

JOHN KIPNGETICH KOSKEI 1ST RESPONDENT

JOYCE KWAMBOKA 2ND RESPONDENT

**SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE
SELAH NYOKABI KAYUNI**

RULING

1. This ruling is in respect of the Notice of Motion dated 11th February 2025 where the appellant/applicant seeks the following orders;
 - i. -ii- Spent.
 - iii. That this honourable court be pleased to grant stay of execution of the judgment and/or decree and all subsequential orders in this matter pending hearing and determination of the appellant/applicant's appeal being Nakuru High Civil Appeal No. E141 of 2024.
 - iv. That the costs of this application be in the cause.
2. The application is premised on the grounds on its face plus the supporting affidavit of the applicant sworn on 26th May 2025. The main prayer is stay of execution of the judgment and decree in Molo CMCC No. 167 of 2023. In the said judgment the appellant was found to be liable and an award totalling to kshs. 4,414,161/= plus costs and interest issued to the respondent. The appellant/applicant has filed this appeal.



3. The application is opposed vide the 1st respondent's replying affidavit dated 14th March 2025. He averred that the application is bad in law, inept and otherwise an abuse of the court process, and intended to further delay his enjoyment of the fruits of his judgement.
4. He averred that the applicant applied for leave to appeal out time in the primary suit and was granted a stay on condition that he deposits the balance of the judgement sum as a security in an interest earning account in the names of both counsel. However, the appellant/applicant failed to deposit the sum and instead sought to review the court's earlier orders whereby the trial court delivered its ruling on 2nd September 2024. He added that deposit of security was to allow the Judgment creditors not to experience any hardship when trying to recover the judgment sum in the event the appeal fails. He urged the court to dismiss the application dated 11th February 2025 with costs.
5. The application was canvassed by way of written submissions.

Appellant's submissions

6. These were filed by Olonyi & Company Advocates and are dated 17th June, 2025. Counsel gave a brief background of the case and identified four (4) issues for determination.
7. The first issue is whether the appellant/applicant's application is merited. Counsel submitted that the trial court delivered its ruling on 2nd September 2024 granting the appellant/applicant stay of execution on condition that the decretal amount is deposited in the parties advocates joint interest earning account, despite him having deposited kshs. 3,000,000/= with the respondents' advocates. He stated that the said ruling intended to punish the appellant/applicant by asking him to pursue his appeal without considering the probability that in the event that the appeal succeeds the appellant/applicant may lose his money.
8. The second issue is whether the payment was made to the respondent as security or settlement of the decretal amount. Counsel submitted that when the trial court ordered the full decretal amount be deposited in a joint account of the parties' advocates account it implied that the money paid to the respondents was part of the security and not payment towards settlement of the decretal amount.
9. On the third issue on whether payment of kshs. 3,000,000/= to the respondents is sufficient, counsel submitted that the same was sufficient and the respondents ought to prove that they are not people of straw.
10. Lastly, is whether the appellant/applicant deserved stay of execution pending appeal. Counsel submitted that the pending appeal has very high chances of success and the appellant/applicant should be given a chance to be heard. Further, that he had demonstrated that he deserved orders of stay of execution pending the determination of the appeal.
11. He placed reliance on the decision in Joel Kibet Koech v Aaron Kiplangat Kamoing, Civil Application No. E049 of 2021 and Philomena Katheu Matata & Another v Zane Mwirebanga Rono & Another (Civil Appeal E034 of 2024) [2024] KEHC 2799 (KLR) (19 March 2024) (Ruling).

Respondents' submissions

12. These were filed by Musa Machage & Company Advocates and are dated 25th March, 2025. Counsel gave a brief background of the appeal and identified one main issue for determination which is whether the application is meritorious. He submitted that the respondents were opposed to the orders sought in the application for reasons that appeals take time to be heard and disposed of and the respondents will be deprived of the fruits of their judgment.



13. Counsel further submitted that in the event that the court was inclined to allow the application, then the appellant /applicant ought to deposit the balance of the decretal sum plus costs in the parties' advocates joint interest earning account.

Analysis and determination

14. I have considered the application, affidavits and submissions by the parties. I find the issue arising for determination to be whether an order for stay of execution should issue against the judgment delivered on the 7th February, 2024.
15. It is not disputed that the appellant/applicant sought for similar orders in the lower court vide his application dated 2nd October 2024. It is also not disputed that the trial court delivered its ruling in respect of the said application, stay of execution was granted with condition that the appellant / applicant deposits the decretal sum in an interest earning account in the joint names of the respective parties' advocates within 30 days.
16. The principles guiding the grant of a stay of execution pending appeal are well settled. The same are provided for under Order 42 rule 6(2) of the Civil Procedure Rules which 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.

16. In *RWW vs. EKW* [2019] eKLR, also relied on by the respondent the court addressed 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.”
17. From the law and the above decision, it is clear that the purpose of stay of execution is to preserve the substratum of a case pending the hearing and determination of an appeal. Further, a successful litigant has a right and expectation to enjoy the fruits of the decision rendered in his or her favour by the court, and a respondent who has lost a case also has a right of appeal to ventilate his or her displeasure with the said decision of the court. Furthermore, the grant of stay of execution is discretionary and which the court exercises on a case by case basis depending on the circumstances of each case. This court has the duty to balance these rights to ensure that justice is served.
18. From the record herein the trial court on 2nd September, 2024, granted stay of execution of the Judgment on condition that the appellant/applicants deposits, the decretal sum in an interest earning



account in the joint names of their respective advocates within 30 days. It is further shown that on 29/01/2025 the trial court granted stay of execution for 30 days on condition that the appellant/applicant deposits the balance of the decretal sum amounting to Ksh 1,238,378/=. A warrant of arrest was issued against him for unknown reasons. The payment in itself confirms that out of the sum of Kshs 4,248,378/= the appellant/applicant had cleared Ksh 3,000,000/= which is over half of the decretal sum.

19. The appellant/applicant in the Appeal is challenging the decision by the trial court declining to grant him an opportunity to be heard on merit. Since the said ruling is being challenged and a substantial amount has already been paid to the respondent I find that asking him to deposit the balance of Ksh 1,248,378/= as a further condition for stay would be one way of denying him his right to be heard.
20. The upshot is that the application dated 11th February, 2025 is merited and is therefore allowed. There shall be stay of execution of the sum of Ksh 1,248,378/= pending the hearing and determination of the Appeal herein.
21. The Appeal to be fast tracked by the appellant/applicant and to be disposed off within nine (9) months.
22. Costs shall be in the cause.
23. Orders accordingly.

DELIVERED, DATED AND SIGNED THIS 16TH DAY OF OCTOBER, 2025 AT NAKURU.

H. I. ONG'UDI

JUDGE

