



REPUBLIC OF KENYA



**KENYA LAW**  
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**Njoroge v Manahl (Civil Appeal E108 of 2025)  
[2025] KEHC 14034 (KLR) (Appeals) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14034 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**APPEALS**

**CIVIL APPEAL E108 OF 2025**

**AC MRIMA, J**

**OCTOBER 9, 2025**

**BETWEEN**

**MARTIN NJUGUNA NJOROGE ..... APPLICANT**

**AND**

**JOYCE NYAMBURA MWANGI MANAHL ..... RESPONDENT**

**RULING**

1. The facts leading to the instant appeal are straightforward. Joyce Nyambura Mwangi, the Respondent herein, instituted Nairobi [Milimani] Small Claims Court in Small Claims Court Commercial Case No. 6263 of 2024, (hereinafter referred to as 'the suit'). She sought to recover Kshs. 750,000/- from Martin Njuguna Njoroge, the Applicant herein, being money, she advanced to him on refundable basis.
2. The trial Court found that the Respondent had indeed advanced the Applicant the money. Conversely, it established that the Applicant had not proved paying back the money. Accordingly, judgment in the sum of Kshs. 700,000/- was entered for the Respondent. The foregoing findings paved way for an appeal which was preferred by the Appellant/Applicant. Contemporaneously with the filing of the appeal was the Applicant's application by way of Notice of Motion dated 13<sup>th</sup> December 2025 which was supported by the Applicant's affidavit deposed to on a similar date and which sought the following reliefs: -
  1. Spent.
  2. Spent.
  3. That pending the hearing and determination of this Appeal, there be a temporary stay of execution of enforcing of the whole of the Judgment and decree delivered by Honourable J. W.



Nasimiyu on the 14<sup>th</sup> day of October 2024 in SCCOMM No. E6362 of 2024 *Joyce Nyambura Mwangi Manahal -vs- Martin Njuguna Njoroge*.

4. That the costs of this Application be provided for.
3. In the grounds and Affidavit in support of the application, the Applicant claimed that it was imminent that the appeal could be rendered nugatory if an order staying the execution of the judgment was not granted. It was his case that the stay order was necessary so as not to be locked out of an appeal and to forestall the process of execution.
4. In its written submissions dated 23<sup>rd</sup> May 2025 in support of the application, the Applicant claimed that he had satisfied the conditions for the grant of stay under Order 42 of the [Civil Procedure Rules](#). He submitted that he filed the appeal on 11<sup>th</sup> November 2024 and the instant Application on 13<sup>th</sup> December 2024, hence there was no undue delay.
5. On the question regarding substantial loss, the Applicant referred to the decision in [James Wangalwa and Another versus Agnes Naliaka Cheseto](#) [2018] eKLR and stated that the trial Court erred in arriving at the decision that there was a contract between him and the Respondent when in fact no amounts were advanced to him. It was his case that substantial loss, harm and irreversible consequences would befall him should stay not be granted. He claimed further that should the orders sought not be granted, the Appeal before this Court would be rendered nugatory as the Respondent would proceed with execution of the decree.
6. Joyce Nyambura Mwangi challenged the application through her Replying Affidavit deposed to on 11<sup>th</sup> March 2025. She stated that the Respondent has not demonstrated any substantial loss that he may suffer should the execution proceedings proceed. It was her case that there ought to be empirical or documentary evidence to support such contention. The foregoing notwithstanding, it was her case that the appeal does not have any chances of success for lack of merit. Additionally, she deposed that the Applicant had not furnished security for due performance of the decree which could be bidding upon him if the appeal fails.
7. In conclusion, the Respondent urged this Court to order the Applicant to deposit the entire decretal sum if it were inclined to allow the application.
8. The Respondent did not file written submissions.
9. Given the above background to the application, the only issue for determination is whether the application meets the threshold for the grant of stay of execution. Order 42 Rule 6(2) of the [Civil Procedure Rules](#) provide for the three conditions precedent to granting of a stay of execution order. They are a demonstration of substantial loss to the Applicant unless the order is made; whether the application has been made without unreasonable delay and such security as the Court orders for the due performance of such decree or order as may ultimately be binding on the Applicant.
10. Courts have also added flesh to the foregoing requirements as to whether to grant stay orders. In Civil Application Nai 6 of 1979, [Butt -vs- Rent Restriction Tribunal](#) [1979] eKLR, the Court of Appeal while referring to the decision of Bret, LJ in [Wilson v Church](#) (No 2) 12 Ch D (1879) 454 at p 459 made the following compelling remarks: -

... 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. In the same case, Cotton LJ said at p 458:

... I will state my opinion that when a party is appealing, exercising his undoubted right of appeal, this court ought to see that the appeal, if successful, is not nugatory.

11. The Learned Judges then crystallized conditions as hereunder;
  - a. The power of the Court to grant or refuse an application for a stay of execution is discretionary; and the discretion should be exercised in such a way as not to prevent an appeal.
  - b. Secondly, the general principle in granting or refusing a stay is, if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should the appeal court reverse the judge's discretion.
  - c. Thirdly, a judge should not refuse a stay if there are good grounds for granting it merely because, in his opinion, a better remedy may become available to the applicant at the end of the proceedings.
  - d. Finally, the Court in exercising its discretion whether to grant or refuse an application for stay will consider the special circumstances and its unique requirements. The court in exercising its powers under Order XLI Rule 4(2) (b) of the *Civil Procedure Rules*, can order security upon application by either party or on its own motion. Failure to put security of costs as ordered will cause the order for stay of execution to lapse.
12. This Court will now consider the foregoing principles as applicable in this matter. On the aspect of substantial loss, the sum of money in contest is Kshs, 700,000/-. The Applicant claims that he will suffer irreparable loss and damage if execution proceedings were to take place. The amount in dispute is significant. If executed, it may occasion the Applicant financial hardship. More importantly, the Respondent has not demonstrated her financial ability to refund the money in the event the appeal fails.
13. In the case of *National Industrial Credit Bank Ltd -vs- Aquinas Francis Wasike & Another* (2006) eKLR the Court of Appeal held thus: -

.... Once an Applicant expresses a reasonable fact that a Respondent would be unable to pay back the decretal sum, the evidential burden must then shift to the Respondent to show whatever resources he has since that is a matter which is peculiarly within his knowledge.
14. The Respondent has not made any deposition speaking to her ability to make a refund of the decretal sum should the appeal be successful. In the premise, this Court is inclined to taking the potion that the Applicant may suffer substantial loss.
15. As to whether the application has been made without unreasonable delay, it is notable that judgment was rendered on 14<sup>th</sup> October 2024. Subsequently, on 11<sup>th</sup> November 2024, just over three weeks later, the Applicant lodged its Memorandum of Appeal. The Applicant then instituted the instant application before the lapse of two months from the date of judgment. In this Court's assessment, the period is not inordinately long.
16. The objective of security is to protect a Respondent from starting the process of execution from the very beginning in the event the appeal fails.



17. The Court of Appeal in Civil Appeal (Application) No. 38 of 2013 *Gatirau Peter Munya -vs- Dickson Mwenda Kithinji & 2 others* [2014] eKLR laid down the basis ordering for security. It stated as follows:

.... The rationale for security for costs is to ensure firstly, that a party is not left without recompense for costs that might be awarded to him in the event that the unsuccessful party is unable to pay the same due to poverty; secondly, it ensures that a litigant who by reason of his financial ability is unable to pay costs of the litigation if he loses, is disabled from carrying on litigation indefinitely except on conditions that offer protection to the other party. In *NoorMohamed Abdulla -vs- Ranchbodbhal J. Patel & Another* (1962) EA. 448, it was held: -

... The order for security for costs in such a case is not directed towards enforcing payment of the costs as such, but is designed to ensure that a litigant who by reason of near insolvency is unable to pay the costs of the litigation when he loses, is disabled from carrying on the litigation indefinitely except upon terms and conditions which afford some measure of protection to the other parties.

18. In *Gianfranco Manenthi & another vs. Africa Merchant Assurance Company Ltd* [2019] eKLR the Court observed as follows: -

... the applicant must show and meet the condition of payment of security for due performance of the decree. Under this condition a party who seeks the right of appeal from money decree of the lower court for an order of stay must satisfy this condition on security. In this regard, the security for due performance of the decree under order 42 rule 6(1) of the *Civil Procedure Rules*, it is trite that the winner of litigation should not be denied the opportunity to execute the decree in order to enjoy the fruits of his judgment in case the appeal fails.

Further, order 42 should be seen from the point of view that a debt is already owed and due for payment to the successful litigant in a litigation before a court which has delivered the matter in his favour. This is therefore to provide a situation for the court that if the appellant fails to succeed on appeal there could be no return to status quo on the part of the plaintiff to initiate execution proceedings where the judgement involves a money decree. The court would order for the release of the deposited decretal amount to the respondent in the appeal ... Thus, the objective of the legal provisions on security was never intended to fetter the right of appeal. It was also put in place to ensure that courts do not assist litigants to delay execution of decrees through filing vexatious and frivolous appeals. In any event, the issue of deposit of security for due performance of decree is not a matter of willingness by the applicant but for the court to determine. Counsel for the applicant submitted that he is ready to provide a bank guarantee as security for due performance of the decree.

19. It was only the Respondent who submitted on this limb of the requirements for stay of the execution. Since the appeal is in respect of a money decree, and in order to ensure the Applicant's right of appeal is not denied and considering the need not to return the Respondent to the drawing board, the Applicant, as proposed by the Respondent ought to make a deposit to guarantee due performance of the decree in the event he fails on appeal.
20. Drawing from the foregoing observations, and in observance of the discretionary power vested upon a Court not to prevent a party from pursuing its appeal, this Court is inclined to allow the application dated 13<sup>th</sup> December 2024 in the following terms: -



- (a) There be a stay of execution of the judgment in Nairobi [Milimani] Small Claims Court in Small Claims Court Commercial Case No. 6263 of 2024 delivered on 14<sup>th</sup> October 2024 on condition that the Applicant shall deposit the sum of Kshs. 500,000/- [Five Hundred Thousand Only] in Court as security within 21 days hereof failure which the stay orders shall automatically lapse and the Respondent shall be at liberty to levy execution.
- (b) The trial Court file be availed for further directions.
- (c) Costs of the application to be in the appeal.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 9<sup>TH</sup> DAY OF OCTOBER, 2025.**

**A. C. MRIMA**

**JUDGE**

Ruling No.1 virtually delivered in the presence of:

Ms Anjiela , Learned Counsel for the Appellant/Applicant.

Michael/Amina – Court Assistants.

