



REPUBLIC OF KENYA



**Reshly Logistics Limited & 2 others v First Capital Limited (Civil Appeal E184 of 2025) [2025] KEHC 14424 (KLR) (15 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14424 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CIVIL APPEAL E184 OF 2025  
RN NYAKUNDI, J  
OCTOBER 15, 2025**

**BETWEEN**

**RESHLY LOGISTICS LIMITED ..... 1<sup>ST</sup> APPELLANT**

**NELSON KIPRUTO ..... 2<sup>ND</sup> APPELLANT**

**JOYCE CHEPCHIRCHIR SEREM ..... 3<sup>RD</sup> APPELLANT**

**AND**

**FIRST CAPITAL LIMITED ..... RESPONDENT**

**RULING**

1. Before this court is an application dated 7<sup>th</sup> August 2025. The application seeks orders as follows;
  - i. That this Application be certified as urgent and service of the same be dispensed with in the first instance.
  - ii. That pending the hearing and determination of this application this Honorable Court be pleased to grant and order of stay of execution of the judgment delivered herein on 10<sup>th</sup> July, 2025 for a sum of Kshs. 1,357,500 and all consequential orders thereof.
  - iii. That this Honorable Court be pleased to grant an order of stay of execution of Judgment delivered on 10<sup>th</sup> July, 2025 and all consequential orders thereof herein pending the hearing and determination of the appeal filed herewith.
  - iv. That costs of this application be provided for.
2. The application is made on the following grounds;
  - a. This Honorable Court delivered its judgment against the Applicants on 10<sup>th</sup> July, 2025 for the sum of Ksh. 1,357,500 and costs of the suit thereof;



- b. The Honorable Court did grant a stay of execution of 30 days of the said judgment which is almost lapsing;
  - c. The Applicants having been dissatisfied with the said judgment lodged an appeal at the High Court on 7<sup>th</sup> August, 2025 and the same is registered as Eldoret HCCA No. E184 of 2025.
  - d. The said appeal is yet to be heard and determined;
  - e. The Respondent has threatened to levy execution as against the Applicants herein anytime which execution would cause the Applicants substantial harm and render the appeal already lodged nugatory;
  - f. The Applicants are ready to deposit security for due performance of the Judgment as maybe ordered by this Honorable Court;
  - g. This Application has been brought without any unreasonable delay on the part of the Applicant.
3. The application is supported by the annexed affidavit sworn by Stephen Ombego stating as follows;
- a. That I have been in conduct of this matter on behalf of the Applicants and well versed with the same hence competent to swear this Affidavit.
  - b. That this Honorable Court delivered its judgment against the Applicants on 10<sup>th</sup> July 2025 for the sum of Ksh. 1,357,500 and costs of the suit thereof (Annexed and marked SO is a true copy of the Judgement)
  - c. That the Honorable Court did grant a stay of execution of 30 days of the said judgement which stay is almost lapsing and as such, the Respondent can levy execution any time to the detriment of my clients.
  - d. That the Applicant having been dissatisfied with the said judgment lodged at the High Court (Annexed and marked 'SO-2' is a true copy of the Memorandum of Appeal)
  - e. That the said appeal so lodged at the High Court is yet to be heard and determined.
  - f. That the Respondent has threatened to levy execution as against the Applicants herein anytime which execution would cause the Applicants substantial harm and render the appeal already lodged at the High Court nugatory.
  - g. That the Applicants are ready and capable to deposit security for due performance of the decree as may be ordered by this Honorable Court.
  - h. That this application has been brought without any unreasonable delay on the part of the applicant.
  - i. That this Honorable Court has the power to grant the orders sought herein in the interest of justice.
  - j. That I have stated a true to the best of my knowledge, information and belief save where sources of information have been disclosed.

### **Decision**

4. The application for stay of execution of the judgement of the trial court has to be considered within the threshold of Order 42 Rule 6 of the Civil Procedure Rules. The key condition precedent includes,



unreasonable delay, sufficient cause, substantial laws and security deposit for costs. 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.”

5. Similarly, in the case of *Nizaba International Trading Ltd and others v Habib Bank Ltd*, Kisumu High Court civil case number 53 of 2003 (Tanui, J on 23, January 2006) stated;

“In approaching an application for stay of execution pending appeal the Court must bear in mind the fact that ordinarily the successful party should be allowed to enjoy the fruit of his success and the consequence of such application is a hindrance or an impediment to the enjoyment of such judgment.

In order that an unsuccessful party may succeed in obtaining such impediment or stay pending an appeal he must satisfy the Court by an affidavit or otherwise that substantial loss may result to him unless a stay is granted.

Where the applicant is a bank and it cannot be claimed that if the said orders are not stayed it will be unable to run its business no substantial loss may result to the defendant.”

6. I have reviewed the affidavit in this matter together with the cases cited in this analysis the application for stay of execution pending is discretionary which discretion should be exercised judiciously. It is at the stage of this application I find it fit that the application of stay has merit and the same be and is hereby allowed. That further the applicant/ appellant do file the appeal within 35 days from today’s date with a condition of depositing a half of the decretal sum in joint earning interest account of both counsels pending the hearing and determination of the appeal.

7. The costs of this application to abide the outcome of the appeal.

**GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 15<sup>TH</sup> DAY OF OCTOBER, 2025**

.....

**R. NYAKUNDI**

**JUDGE**

