



REPUBLIC OF KENYA



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**Rosoga Investment Limited v Njuguna (Suing as the Legal Representative
of the Estate of the Late Selah Nyokabi Kayuni) (Civil Appeal
E116 of 2025) [2025] KEHC 14263 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14263 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL E116 OF 2025
HI ONG'UDI, J
OCTOBER 9, 2025**

BETWEEN

ROSOGA INVESTMENT LIMITED APPLICANT

AND

**FRANCIS KAMAU NJUGUNA (SUING AS THE LEGAL REPRESENTATIVE OF
THE ESTATE OF THE LATE SELAH NYOKABI KAYUNI) RESPONDENT**

RULING

1. This ruling is in respect of the Notice of Motion dated 26th May 2025 where the appellant/applicant seeks the following orders;
 - i. -
 - ii. - Spent.
 - iii. That this honourable court be pleased to order a stay of execution of the judgment delivered on 14th April 2025 together with any consequential orders pending hearing and determination of the appeal.
 - iv. That this honourable court be pleased to issue any other order as it deem just, appropriate and expedient to grant in the interest of justice.
 - v. 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 Denning Murithi Ndeke sworn on 26th May 2025. The main prayer is stay of execution of the judgment and decree in Molo CM's court case no. E020 of 2020. In the said judgment the appellant was found to be 100% liable and awards totalling kshs. 1,483,442/= plus costs and interest issued. The appellant/applicant has filed this appeal and application.



3. The application is opposed vide the respondent's replying affidavit dated 10th June 2025. He averred that the application is bad in law, made in bad faith, inept, lacks merit, an afterthought, and otherwise amounts to an abuse of the court process. He stated that the appellant/applicant had failed to satisfy the judgment and instead filed an appeal which has no merit. He further stated that he would be greatly prejudiced if the application is allowed as he has not enjoyed the fruits of his judgement.
4. The application was canvassed by written submissions but only the respondent filed submissions. Those of the appellant/applicant are not in the court file or the CTS portal.
5. The respondent's submissions were filed by Gekonga and Company Advocates and are dated 18th July 2025. Counsel gave a brief background of the case and identified two issues for determination.
6. The first issue is whether the applicant would suffer any loss if the application is not allowed. Counsel cited Order 42 rule (2) (a) of the Civil Procedure Rules, 2010, which states that no stay of execution shall be granted unless the court is satisfied that the application is made without unreasonable delay. He placed reliance on the decision in Equity Bank Limited Vs Taiga Adams Company Limited Civil Appeal No 722 of 2000 as cited in the case of Luxus Woods (K) Limited v Patrick Amugune Kamadi [2016] eKLR where the court stated as follows:

“In the application before me, the applicant has not shown or established the substantial loss that would be suffered if this stay is not granted. The only way of showing or establishing substantial loss is by showing that if the decretal sum is paid to the respondent that if executions carried out in the event the appeal succeeds the respondent would not be in a position to pay reimbursement as he/it is a person of no means. Here, no such allegation is made much less established by the appellant/applicant.”

7. See also; Machira T/A Machira & Co. Advocates v East African Standard (No.2) [2002] KLR 63 and Mutua Kilonzo v Kioka David Machakos [2008] eKLR.
8. On the second issue as to whether the appellant/applicant has given any security, counsel submitted that the bank guarantee was not a proper and viable mode of security. Reference on this was made to the decision in Luxus Woods (K) Limited (supra) which quoted the decision in Equity Bank Limited Vs Taiga Adams Company Limited (Supra) where the court held as follows;

“...of even greater impact is the fact that an applicant has not offered security at all, and this is one of the mandatory tenets under which the application is brought.... Let me conclude by stressing that all the four, not one or some, must be met before this court can grant an order of stay” which principle was also emphasized in Carter & Sons Limited Vs Deposit Protection Fund Board & 3 Others, CA Nairobi 291/1997.”

9. She concluded by urging the court to find that the application lacks merit and dismiss it with costs to the respondent.

Analysis and determination

10. I have considered the application, affidavits and the submissions by the respondent and I find the issue arising for determination to be whether the appellant/applicant has satisfied the ground for issuance of stay of execution.



11. The guiding principles regarding 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

12. In *RWW vs EKW* [2019] eKLR, the court addressed the purpose of a stay of execution order pending appeal as follows;

“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.”

13. 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. The court has a duty to weigh and balance both situations.

14. This position was affirmed in the case of *Regional Institute of Business Management v Lucas Ondong' Otieno* [2020] eKLR where the court observed as follows;

“20. Weighing the Applicants' right to have his dispute determined fairly in a court of law or competent tribunal as provided in Article 50(1) of *the Constitution* of Kenya and the equally important Respondent's fundamental right that justice delayed is justice denied as stipulated in Article 159(2) (b) of *the Constitution* of Kenya, this court determined that there would be more injustice and prejudice to be suffered by the Applicants if they were denied an opportunity to ventilate their Appeal on merit in the event an order for stay of execution was not granted”.

15. The application herein was filed on 26th May 2025 after delivery of the impugned ruling on 14th April 2025. There is therefore no delay in the filing of the appeal and application.

16. On substantial loss, the appellant/applicant averred that in the event execution takes place it's appeal would be rendered nugatory. On his part the respondent argued that both the appeal and the application lacked merit and had no chance of succeeding.



17. In the case of Silverstein vs. Chesoni [2002]1 KLR 867, the court observed that substantial loss was the cornerstone of both jurisdictions and the same had to be prevented by preserving the status quo because such loss would render the appeal nugatory.
18. On security the appellant/applicant stated that it was willing to avail a bank statement. In my opinion this court cannot rely on the bank statement as the same is made in respect of the appellant/applicant and does not favour the respondent in any way. However, this court notes that the appellant/applicant deposited in court kshs.500,000/= pursuant to this court's direction of 27th May 2025.
19. As earlier noted, the grant of stay of execution is discretionary and the court will exercise this discretion on a case by case basis depending on the circumstances of the case. This court has the duty to balance rights to ensure that justice is served.
20. The above being the position, I allow the prayer for stay of execution of the judgment delivered on 14th April, 2025 and the appellant/applicant is directed to prosecute his appeal within twelve (12) months from the date of this ruling failure to which the stay orders shall lapse. The Kshs 500,000/= shall remain deposited until the appeal is heard and determined.
21. The upshot is that the application dated 26th May 2025 is merited and is allowed.
22. Costs shall be in the cause.
23. Orders accordingly.

DELIVERED, VIRTUALLY DATED AND SIGNED THIS 9TH DAY OF OCTOBER, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

