



**SKN v LKT (Civil Appeal E021 of 2025)
[2025] KEHC 14105 (KLR) (Family) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14105 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL APPEAL E021 OF 2025
H NAMISI, J
OCTOBER 9, 2025**

BETWEEN

SKN APPLICANT

AND

LKT RESPONDENT

RULING

1. Before me is a Notice of Motion dated 12 February 2025 seeking, principally, an order for stay of execution of the judgement and decree of the Chief Magistrate’s Court in Divorce Cause No. E236 of 2024, delivered on 6 February 2025. Specifically, the Application seeks to stay the order requiring him to pay the Respondent spousal maintenance of Kshs 200,000/= for a period of one year, pending the hearing and determination of his intended appeal.
2. The Application is premised on the grounds on the face thereof and supported by the Affidavit sworn by the Application on 12 February 2025, as well as the Further Affidavit sworn on 18 March 2025. The Respondent is opposed to the Application and has filed Replying Affidavit sworn on 4 March 2025. Both parties filed written submissions, which I have duly considered.
3. The brief background of this case is that parties were married on 6 December 1997, a union that lasted approximately 29 years and was blessed with 3 children. Following petitions by both parties, the trial court dissolved the marriage on 6 February 2025. In addition, the trial court ordered the Applicant to pay the Respondent spousal maintenance of Kshs 200,000/= per month for a period of one year. The trial court, in its judgement, noted that the Respondent’s claim of a cumulative monthly rental income of Kshs 773,000/- from various matrimonial properties and observed that the Applicant had admitted during cross examination to the Respondent collecting this sum and handing it over in cash. It is this maintenance order that has aggrieved the Applicant, leading to the present application for stay pending appeal.



The Applicant's Case

4. The Applicant states that he will suffer substantial loss if the stay is not granted. He contends that the trial court's order was based on a speculative and grossly inflated rental income figure of Kshs 773,000/= per month. He asserts that his actual net rental income is approximately Kshs 200,000/- per month after expenses, and his net salary from the Central Bank of Kenya is Kshs 106,401.80. Therefore, paying Kshs 200,000/= per month in maintenance is financially crippling and exceeds his capacity.
5. The Applicant further submits that he is set to retire on 14 November 2025, which will drastically reduce his income. He also points out his ongoing medical conditions, including diabetes and hypertension, which require significant financial resources, especially as he will lose his employer-provided medical cover upon retirement.
6. He submits that his appeal is arguable and raises substantial questions, including the trial court's reliance on unverified income figures and its failure to properly consider his Affidavit of Means. He expresses fear that should he may the maintenance and his appeal subsequently succeeds, he would be unable to recover the sums paid from the Respondent, who claims to have no source of income. This, he argues, would render the appeal nugatory.
7. The Application was filed without delay, just 6 days after the judgement was delivered.

The Respondent's Case

8. The Respondent contends that the Applicant is a man of substantial means and will not suffer any loss, let alone substantial loss, by complying with the court's orders. The Respondent maintains that the Applicant's monthly income is Kshs 879,401.80, comprising of his salary and the Kshs 773,000/= rental income the admitted to in the lower court. She argues that paying Kshs 200,000/= from this sum is minimal and leaves the Applicant with more than enough for his upkeep.
9. Conversely, the Applicant argues that she is the one who will suffer substantial loss if the stay is granted. She states that she was a housewife for 29 years, contributing non-monetarily to the acquisition and development of the family's properties. She claims that the Applicant forcefully evicted her from both the matrimonial home and her small business, leaving her destitute and dependent on well wishers.
10. The Respondent further submits that the Application is made in bad faith to deny her the fruits of her judgement and that the appeal has no chance of success. The Respondent faults the Applicant for failing to offer any security for the due performance of the decree as required by law, arguing that this failure is fatal to the Application.

Analysis & Determination

11. The principles governing the grant of stay of execution pending appeal are well settled and codified in Order 42 rule 6(2) of the Civil Procedure Rules. An applicant must satisfy the court on 3 conditions:
 - i. That substantial loss may result to the applicant unless the order is made;
 - ii. That the application has been made without unreasonable delay; and
 - iii. That such security as the court orders for the due performance of the decree has been given to the applicant.
12. These conditions are conjunctive and an applicant must satisfy all three for the Court's discretion to be exercised in their favor.



13. On the issue of unreasonable delay, the judgement sought to be stayed was delivered on 6 February 2025 and this Application filed on 12 February 2025. I find that the Application was brought promptly and without unreasonable delay. The Applicant has, therefore, satisfied the first condition.
14. On the issue of substantial loss, the burden lies with the Applicant to demonstrate that he stands to suffer a loss that is significant and cannot be adequately compensated by damages if the appeal succeeds. In the case of *Kenya Shell Ltd -vs- Kibiru & Another* [1986] KLR 410, the Court of Appeal held that substantial loss is the kind of loss that would render the appeal nugatory, such as when the appellant would have difficulty in recovering the decretal amount from the respondent should the appeal succeed.
15. The parties have presented two starkly contrasted narratives of the Applicant's financial position. The Applicant claims a total net monthly income of approximately Kshs 306,000/=, while the Respondent claims it is approximately Kshs 879,000/=. This disparity of over half a million shillings per month hinges on the true rental income. While the trial court found that the Applicant admitted to the higher figure in cross examination, the Applicant now contests this, arguing the figure was speculative and based on valuations.
16. It is not the role of this Court, at this interlocutory stage, to make a definitive finding on the Applicant's true income. That is a substantive issue for appeal. However, the existence of this significant factual dispute demonstrates that the appeal is not frivolous, but is, indeed, arguable.
17. The critical question is whether the Applicant would suffer substantial loss if the stay is denied. He would be required to pay Kshs 200,000 monthly. If his appeal succeeds and it is determined that the maintenance should have been lower or none at all, he would have to recover the overpayment from the Respondent. The Respondent has consistently described herself as being without any economic livelihood and dependent on well wishers. In such circumstances, the Applicant's ability to recover the sums paid would be highly doubtful. This difficult, or impossibility, of recovering the money constitutes substantial loss. As was held in *Antoine Ndoiye -vs- African Virtual University* [2015] eKLR, this Court must consider the ability of the Respondent to refund the decretal sum. In this case, that ability is questionable on the Respondent's own evidence.
18. I am, therefore, satisfied that the Applicant has established, on a balance of probabilities, that he stands to suffer substantial loss if the stay is not granted.
19. Lastly, security for due performance, is the balancing rod that protects the interests of the successful litigant from being prejudiced by the stay, ensuring that she can access the fruits of her judgement if the appeal fails. In his submissions, the Applicant states his willingness to abide by the terms as the Court may impose.
20. In *Equity Bank Ltd -vs- Taiga Adams Company Ltd* [2006] eKLR, the Court observed that the purpose of security is to guarantee the due performance of the decree, not to punish the judgment-debtor. The Court must strike a balance that protects the Respondent's rights without rendering the Applicant's right of appeal illusory.
21. Given the circumstances, an unconditional stay would be prejudicial to the Respondent, who has an immediate need for maintenance, having been granted a judgement in her favor. On the other hand, denying a stay entirely would be prejudicial to the Applicant. The most judicious approach is a conditional stay that balances these competing interests.
22. I have considered that the Applicant has ongoing responsibilities, including for the youngest child of the marriage. I have also considered the Respondent's immediate needs, having been displaced from



the matrimonial home and her business. A fair order would be one that provides the Respondent with some immediate relief while securing the bulk of the contested amount pending the appeal.

23. Having satisfied all 3 conditions for the grant of a stay of execution under Order 42 rule 6, the Application herein is merited.
24. Accordingly, I make the following orders:
- i. There shall be a conditional stay of execution of the judgement delivered on 6 February 2025 in Milimani Chief Magistrates Court Divorce Case No E236 of 2024 pending hearing and determination of the appeal;
 - ii. That the said stay is conditional upon the Applicant/Appellant, complying with the following terms:
 - a. The Applicant shall pay to the Respondent the sum of Kshs 100,000/= per month as partial maintenance pending the determination of the appeal. The payment shall be made on or before 15 October 2025 and subsequent payments shall be made on or before the 15th day of each succeeding month.
 - b. The Applicant shall deposit the balance of the monthly maintenance of Kshs 100,000/= into a joint interest-earning bank account to be opened in the names of the Advocates for the Applicant and Respondent. The first such deposit shall be made on 15 October 2025 and subsequently on or before every 15th day of the month;
 - c. That in default of any single monthly payment or deposit as ordered in (a) and (b) above, the stay of execution shall automatically lapse;
 - d. That the Applicant shall file and serve the Record of Appeal and submissions thereon within 45 days of the date hereof. The Respondent shall file submissions within 21 days of service.
 - e. That costs of this Application shall abide the outcome of the appeal.

DATED AND DELIVERED AT NAIROBI THIS 9 DAY OF OCTOBER 2025

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

for the Applicant: Ngeru

for the Respondent: Ms. Oyombe

Court Assistant: Lucy Mwangi

