



REPUBLIC OF KENYA



**Mbigo v Wangocho (Civil Appeal E055 of 2024)
[2025] KEHC 14908 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14908 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E055 OF 2024
EM MURIITHI, J
OCTOBER 23, 2025**

BETWEEN

JOSEPH MACHARIA MBIGO APPELLANT

AND

JAMES KAMUNYE WANGOCHO RESPONDENT

RULING

1. The applicant filed a notice of motion dated 28th May, 2024 seeking the following orders:
 1. Spent.
 2. This court do grant stay of execution of the judgment issued by the Kerugoya court in C.M.C.C. 27 of 2019 pending a hearing and determination this application interpartes.
 3. This court do grant stay of execution of the judgment issued by the Kerugoya court in C.M.C.C. 27 of 2019 pending hearing and determination of Kerugoya High Court civil appeal no.55 of 2024.
 4. Costs be provided for.
2. The application is based on the grounds on the face of the application and the supporting affidavit of applicant. The applicant's case is that he had insured his motor vehicle with BlueShield insurance that the same was allegedly involved in an accident where the respondent was injured. He was not called to testify and avail witnesses especially the driver of the motor vehicle and only the plaintiff's witnesses testified because his insurer hired an advocate to defend the case.
3. The applicant avers that he filed an application dated 5/2/2024 to challenge the judgment as he was condemned unheard and also sought stay of execution as there was a moratorium issued staying execution against BlueShield Insurance Co. Ltd and its creditors. The application was heard and dismissed.



4. Further, the applicant avers that he was dissatisfied with the ruling issued on 22/5/2024 and filed an appeal being Kerugoya Civil Appeal No. 55 of 2024
5. Moreover, that the decree can be effected any time now as he has already been served with the notice to show cause. He stands to suffer great prejudice if the judgment is effected as he will be subjected to civil jail term which is unconstitutional and his vehicle was insured. That his appeal has high chances of success.
6. Lastly, that no prejudice will be suffered by the respondent if the decree is stayed as the respondent will receive compensation from the Policy Holders Compensation Fund as the notice has already been issued.
7. The Respondent filed a Replying Affidavit sworn on 13th June, 2024 setting out his response. The respondent avers that the Judgement in KERUGOYA CMCC NO. 27 OF 2010 was delivered on 22nd May, 2024 and there has been inordinate delay in filing the application challenging the said judgment. The Appellant/Applicant failed to justify the inordinate delay. Further, the respondent as the successful litigant should not be kept away from the fruits of judgment. Lastly, the Appellant/applicant has not offered security for due performance of the decree.

Applicant submissions

8. On substantial loss the applicant submits that since the decree can be executed any time now as the applicant has already been served with the notice to show cause. The suffering and turmoil the applicant is likely to suffer if committed to civil jail cannot be adequately compensated by damages. The applicant has demonstrated that he is likely to suffer substantial loss and his human rights will be infringed.
9. The applicant submits that no prejudice will be suffered by the respondent if the decree is stayed as the respondent will receive compensation from the Policy Holders Compensation Fund as the notice has already been issued and he has annexed a copy of the notice.
10. In the case of Absalom Dora vs Turbo Transporters (2013) eKLR, it was stated that:

“The discretionary relief of stay of execution pending appeal is designed on the basis that no one would be worse off by virtue of an order of the court as such order do not introduce any disadvantage but administers the justice that the case deserves”.
11. On reasonable delay, the applicant deponed that the ruling he was appealing against was delivered on 22/5/2024. The memorandum of appeal was filed soon thereafter and the application for stay was filed on 28/5/2024. The court should exercise its discretion in favour of the applicant as the delay was just for 6 days.
12. On giving security, the applicant is ready to give security as the Court may order.

Respondent submissions

13. On substantial loss, the respondent submits that the Appellant/Applicant has not demonstrated what substantial loss he is likely to suffer and therefore there is no evidence of substantial loss to the applicant.
14. Further, the Respondent should not be denied the fruit of his judgment as the Appellant/Applicant may recover the judgment sum from the Respondent in the unlikely event that the Appeal Succeeds. There is no evidence tendered by the Appellant/applicant to demonstrate that paying the judgment sum would prejudice the Appellant’s right to an appeal.



15. In the case of *Nyatera v Nyakundi* (Civil Appeal E033 of 2022) 2023 KEHC 3086 KLR 16 March 2023 ‘ruling: where the court held as follows:

“The general rule is that the Court ought not to deny a successful litigant of the fruits of his judgement save in exceptional circumstances where to decline to do so may well amount to stifling the right of the unsuccessful party to challenge the decision in the higher Court.”

16. On security for the due performance of the decree, the respondent submits that the Appellant/Applicant is not entitled to orders of stay of execution as he has not offered any security for the due performance of the decree.

Issue

17. Whether stay of execution pending appeal should be granted

Analysis

18. The applicant seeks this court to grant stay of execution of the judgment issued by the Kerugoya court in C.M.C.C. 27 of 2019 pending hearing and determination of Kerugoya High Court civil appeal no.55 of 2024.

19. The law governing stay of execution pending appeal is provided for under Order 42 Rule 6 of the Civil Procedure Rules which provide as follows:

20. Order 42 Rule 6(2) provides that:

“No order for stay of execution shall be made 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 the applicant has been given.”

Whether the application was filed without unreasonable delay

21. The ruling appealed against was delivered on 22nd May 2024 and this application was filed on 28th May 2024, a delay of six (6) days. I find the delay reasonable and satisfactorily explained. This condition is therefore met.

Whether the Applicant will suffer substantial loss

22. The Applicant deposes that execution has commenced and that he has been served with a notice to show cause and risks committal to civil jail. He further argues that his vehicle was insured by BlueShield Insurance Company and that a moratorium is in force staying execution against the insurer’s creditors. He contends that if execution proceeds, he will suffer irreparable harm as he was condemned unheard and will be subjected to unlawful imprisonment.

23. The Respondent, on the other hand, maintains that no substantial loss has been shown and that he is entitled to enjoy the fruits of his judgment, relying on *Nyatera v Nyakundi*, supra.



24. Substantial loss is the cornerstone of an application for stay. As stated in *Kenya Shell Ltd v Kibiru & Another* [1986] KLR 410, substantial loss is what must be prevented by preserving the status quo pending appeal.
25. In this case, the Applicant faces imminent execution and possible committal to civil jail, which cannot be compensated by an award of damages and the court considers that substantial loss has been demonstrated.

Security for due performance

26. The Applicant has expressed readiness to provide security as the Court may deem fit. The respondent submits that the Appellant/Applicant is not entitled to orders of stay of execution as he has not offered any security for the due performance of the decree.
27. Since the requirement for security is mandatory, and to balance the interests of both parties, the court will order that security be provided.

Orders

28. Accordingly for reasons set out above, the court finds merit in the application for stay of execution and it is allowed upon terms that:
 1. The applicant shall provide a Bankers Guarantee for the payment of the decretal sum within a period of thirty (30) days.
 2. The application for stay of execution pending appeal is granted subject to the deposit of Bankers Guarantee in No.1 above.
 3. In default execution to issue.
29. Costs in the Cause.
Orders accordingly.

DATED AND DELIVERED THIS 23RD DAY OF OCTOBER 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Ms. A. Thungu for the Appellant.

Mr. Magee for the Respondent.

