



**Mwenda v Kinoti (Civil Appeal E003 of 2025)  
[2025] KEHC 14981 (KLR) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14981 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL APPEAL E003 OF 2025  
HM NYAGA, J  
OCTOBER 23, 2025**

**BETWEEN**

**DENIS MWENDA ..... APPELLANT**

**AND**

**FAITH KINOTI ..... RESPONDENT**

**RULING**

1. The application before me is dated 12/2/2025 and it seeks the following orders:-
  - i. Spent
  - ii. That this Honourable court be pleased to issue an order of stay staying execution, in any manner, of the judgment delivered on 18<sup>th</sup> December, 2024 by the Learned Trial Magistrate, the Honourable H. Nyamweya, Magistrate, in the Meru Small Claims Court Case No. SCCOMM/E822/2024, pending hearing and determination inter-partes of the instant application.
  - iii. That this Honorable court be pleased to issue an order of stay, staying the execution, in any manner, of the Judgment of XZthe learned Trial Magistrate, the Honourable H. Nyamweya, Magistrate, in the Meru Small Claims court Case No. SCCOMM/E822/2024, pending hearing and determination of the Appeal.
  - iv. Costs of this application be provided for.
2. The gist of the application is that the applicant is aggrieved by the judgment of the Meru Small Claims Court delivered on 18<sup>th</sup> December, 2024 and has preferred the appeal herein. That the applicant has been served with a notice to show cause in execution of the decree of the lower court. That unless stay is granted, he shall suffer irreparable loss and damage.



3. The respondent filed a replying affidavit in opposition to the application. The long and short of the respondent's reply is that after Judgment was delivered, the applicant was granted 30 days stay of execution and only filed the appeal on 18<sup>th</sup> January, 2025.
4. The respondent further argues that the applicant has not offered any security as required under Order 42 Rule 6 of the Civil Procedure Rules. That the applicant has not satisfied the court as to the nature of irreparable loss to be suffered if the execution proceeds. She urged the court, in the event it grants the stay, to order that the applicant provides security.

### **Analysis & Determination.**

5. Being an application for stay pending appeal, the applicant has to bring himself within the provisions or order 42 Rule 6 of the Civil Procedure Rules, which provides as follows:-

“(2) No order for stay of execution shall be made under subrule (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.”

6. This rule was considered in *Butt vs Rent Restriction Tribunal* [1982] KLR 417 where the Court of Appeal set out what ought to be considered in determining whether to grant or refuse stay of execution pending appeal. The court said that:-

“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.

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.

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.

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.”

7. Under the head of substantial loss, an applicant must clearly state what loss, if any, he stands to suffer. This principle was expressed in the case of *Shell Ltd vs Kibiru and Another* [1986] KLR 410, Platt, JA set out two different circumstances when substantial loss could arise as follows:-

“The appeal is to be taken against a judgment in which it was held that the present respondents were entitled to claim damages....It is a money decree. An intended appeal does not operate as a stay. The application for stay made in the high Court failed because



the gist of the conditions set out in Order XLI Rule 4 (now Order 42 Rule 6(2)) of the Civil Procedure Rules was not met. There was no evidence of substantial loss to the applicant, either in this matter of paying the damages awarded which would cause difficulty to the applicant itself, or because it would lose its money, if payment was made, since the Respondents would be unable to repay the decretal sum plus costs in two courts....”

8. I have considered the arguments from both sides.
9. I have noted that Judgment was delivered on 18<sup>th</sup> December, 2024 and the appeal was filed on 16<sup>th</sup> January, 2025 as such, there was no delay in doing so.
10. The applicant states that a notice to show cause has been issued against him. It is dated 11<sup>th</sup> February, 2025. He avers that he stands to suffer substantial loss if the stay is not granted. He states that the is amiable to depositing the Logbook for the subject motor vehicle in court.
11. In my view, the offer of security made is not sufficient. There is no value in the logbook, when the applicant will continue to enjoy the exclusive possession of the vehicle which the applicant claims to have made payment for and is the Genesis of the suit in the lower court. As such, the court has to look at another form of security.
12. Having considered the subject matter of the suit in the lower court, the appeal filed herein, and the fact that the applicant has not taken any step to have the appeal prosecuted, it behoves this court to make orders that take account of the rights of each party.
13. I therefore make the following orders:-
  - a. There shall be a stay of execution of the decree of the Lower Court (Small Claims Court) herein pending the hearing and determination of the appeal, but subject to the applicant depositing Ksh. 345,000/= which is approximately half of the decretal sum, in a joint interest earning account in the names of the advocates herein within the next 45 days.
  - b. In default of (a) above these stay orders shall lapse automatically and without further reference to their court. The respondent shall be at liberty to execute the entire lower court’s decree.
  - c. The applicant to file and serve the record of appeal within the next 45 days.
  - d. Costs of the application shall abide by the outcome of the appeal.
  - e. A mention date for compliance shall be given shortly after the delivery of this ruling.

**DATED, SIGNED AND DELIVERED AT MERU THIS 23<sup>RD</sup> DAY OF OCTOBER, 2025.**

**H. M. NYAGA**

**JUDGE.**

