

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL CASE NO E014 OF 2025

PATRICK OMONDI ODINGO APPLICANT

- VERSUS -

THE MONARCH INSURANCE RESPONDENT

OMAR KARIM SALIM

KATIBU BILAL ATHMANI

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}

INTERESTED PARTIES

R U L I N G

1. This ruling is in respect to the applicant's application dated **3/6/2025**. The same was brought under *sections 1A, 1B, 3A & 63 of the Civil Procedure Act, Order 51 rule 1 and 3 of the Civil Procedure Rules*.
2. Primarily, the applicant sought orders of stay of execution of two judgments passed in **Kisumu CMCC No. 275 of 2019** and **Kisumu CMCC 276 of 2019**.
3. The application was based on the grounds set out on the face of the Motion as well as the supporting affidavit of **PATRICK OMONDI ODINGO** sworn on **3/6/2025**.
4. The applicant is the registered owner of motor vehicle registration number **KAK 417C SUZUKI VITARA** that was comprehensively insured by the

respondent with a policy running from the **24/5/2018 – 28/4/2019**. He avers that he was involved in an accident on the **10/8/2018** and subsequently as a result of the fatal injuries arising therefrom, multiple suits were instituted against him and judgment entered against him to the tune of **Kshs. 1,172,6552/-** and **Kshs. 1,150,000/-** respectively which the respondent has declined to settle.

5. The applicant has consequently filed a declaratory suit seeking to compel the respondent to settle the decretal amounts arising out of the said **Kisumu CMCC No. 275 of 2019** and **Kisumu CMCC 276 of 2019**.
6. The respondent has not placed any response to the applicant's application on record. However, the interested parties filed a replying affidavit sworn on the **15/9/2025** by their advocate, **Geoffrey O. Okoth**.
7. It is deposed on behalf of the interested parties that there is no provision for stay of execution of a decree pending the hearing and determination of a new suit. That granting any orders of stay against the interested parties will only continue to infringe on their rights to enjoy the fruits of their judgment.
8. That the applicant bares the primary duty of settling the decretal sum and in case the respondent fails to settle the same, the applicant will still be called upon to satisfy the same.

9. I have looked at the application, the supporting affidavit, the replying affidavit and submission filed. This Court has been called to determine a novel issue, ***whether stay of execution can be granted pending the hearing and determination of a new suit.***

10. Stay of execution is provided for under ***Order 42 rule 6 of the Civil Procedure Rules*** which states that: -

“(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

(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.

(3) Notwithstanding anything contained in subrule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.

(4) ...”

11. From the foregoing, it is clear that the law contemplates stay of execution pending appeal and not pending the hearing and determination of an entirely new suit.

12. In the present case, the applicant has not presented any evidence of having lodged an appeal against the decisions rendered by the trial court in **Kisumu CMCC No. 275 of 2019** and **Kisumu CMCC 276 of 2019**. The applicant has merely intimated the desire to file a declaratory suit against the respondent herein.

13. There is no basis upon which this Court would issue the orders sought by the applicant as the same might amount to abuse of court process.

14. The upshot of the above is that the Court proceeds to strike out the application dated 3/7/2025 with no order as to costs.

It is so ordered.

DATED and **DELIVERED** at Kisumu this 31st day of **October, 2025**.

A. MABEYA, FCI Arb
JUDGE