



**AMA v NAA (Civil Appeal E110 of 2025)
[2025] KEHC 16055 (KLR) (Family) (7 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16055 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
CIVIL APPEAL E110 OF 2025
PM NYAUNDI, J
NOVEMBER 7, 2025**

BETWEEN

AMA APPLICANT

AND

NAA RESPONDENT

RULING

1. The Applicant / Appellant herein has filed an application dated 25th July 2025 seeking stay of execution of the ruling of Honourable S.H Omar (Kadhi) delivered on 27th June 2025 in Nairobi Kadhi’s Court Divorce Cause No. E086 of 2021.
2. The respondent opposes the application and has filed replying affidavit. The Application was canvassed via written submissions.
3. When I retired to write the ruling I found that the applicant has not included the impugned ruling in his application.
4. Stay of Execution pending appeal is governed by Order 42, Rule 6 of the Civil Procedure Rules, 2010 which provides as follows: -
 - (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of 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.
5. The power of a Court to grant stay of execution is discretionary. This discretionary power must not be exercised capriciously or whimsically but must be exercised in a way that does not prevent a party from pursuing its appeal so that the same is not rendered nugatory should the appeal overturn the trial Court's decision. (see *Butt vs. Rent Restriction Tribunal* [1979]).
 6. The purpose of stay of execution is to preserve the subject matter in dispute while balancing the interests of the parties and considering the circumstances of the case. The Court of Appeal in *RWW vs. EKW* (2019) eKLR addressed itself on this as hereunder: -

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. 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. (See also Court of Appeal of Uganda in *Mugenyi & Co. Advocates vs. National Insurance Corporation* [Civil Appeal No. 13 of 1984]).

7. The Court of Appeal in *Vishram Ravji Halai vs. Thornton & Turpin* Civil Application No. Nairobi 15 of 1990 [1990] KLR 365, outlined the requirements for granting stay of execution pending appeal. It held that, whereas the Court of Appeal's power to grant a stay pending appeal is unfettered, the High Court's jurisdiction to do so under Order 41 rule 6 (as it then was) of the Civil Procedure Rules is fettered by three conditions namely, establishment of a sufficient cause, satisfaction of substantial loss and the furnishing of security
8. The first condition therefore is that the applicant must demonstrate that he has an arguable appeal, in the absence of the ruling it is impossible for me to gauge whether this condition has been met. In the circumstances, this application must fail for being defective and is accordingly struck out.
9. On account of the relationship between the parties, there shall be no order as to costs.

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7TH DAY OF NOVEMBER 2025.

P. M. NYAUNDI

JUDGE



In the Presence of;-

Fardosa Court Assistant

Ms. Akinyi holding brief for Mr. Yusuf for Respondent

Oweyo holding brief for Mr. Bashir for Appellant/Applicant

