



**Amal Abdul Thro' Next Friend Aziz Abdul v Nderu (Civil Case  
129 of 2013) [2025] KEHC 15826 (KLR) (Civ) (5 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 15826 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL  
CIVIL CASE 129 OF 2013**

**NW SIFUNA, J**

**NOVEMBER 5, 2025**

**BETWEEN**

**AMAL ABDUL THRO' NEXT FRIEND AZIZ ABDUL ..... DECREE HOLDER**

**AND**

**LOISE WANJIRU NDERU ..... JUDGMENT DEBTOR**

**RULING**

1. This ruling is on the Judgment-Debtor's Application dated 16<sup>th</sup> August 2024. By it, the Judgment-Debtor is principally seeking a stay pending an appeal that she intends to file, and for which she has sought leave to file. In the grounds of the Application, the Judgment-Debtor has stated that she is 82 years old, hence that being caused to pay a decree of over Ksh 36 Million, she will suffer substantial loss as the amount is colossal and such payment may deplete her retirement savings.
2. The judgment intended for appeal was delivered on 4<sup>th</sup> July 2024, and the Application having been made in mid of August 2024, was made after almost one month and twelve days. Which according to the Applicant, was not inordinate delay.
3. As to whether the Applicant has made an offer for security, she has as security for the due performance of the decree, offered a Baroda Bank guarantee for Ksh 16.5 Million, and has already paid to the Decree-Holder the sum of Ksh 3 Million under the said decree.
4. To her, she has from the foregoing, fulfilled the three conditions that Order 42 Rule 6 (2) of the Civil Procedure Rules has prescribed for stay pending appeal.
5. The Decree-Holder has through the Replying Affidavit of the Next Friend Aziz Abdul sworn on 30<sup>th</sup> September 2024, opposed the Application. He also filed a Further Affidavit which the Judgment-Debtor opposed through a Supplementary Affidavit. In his opposition to the Application, the Next



Friend has in the said Replying Affidavit, contended that the Application does not satisfy the three conditions stated in Order 42 Rule 6(2) for stay pending appeal; and especially the requirement of substantial loss.

6. As to the Judgment-debtor's alleged advanced age, the Next Friend has in his response stated that at the time of the accident, the Judgment-Debtor was only 62 years old. He has further stated that the Judgment-Debtor is a woman of means; with estimated wealth of Ksh2 Billion. On the lapse of time between the date of Judgment and the date of this Application (i.e. One Month twelve days), the Next Friend has described that period as unreasonable delay; given that the trial court had at the time of the Judgment granted her a 30- days stay of execution.
7. Further that despite being ordered herein by Onger J, to pay to the Decree-Holder, half the decretal sum (i.e. Ksh 19,753,148=), she did not comply. That the order was for payment of a money sum and not depositing of a bank guarantee. There having been no variation.

### **Analysis and Determination**

8. I have considered the Application (and its Supporting Affidavit) and the Respondent's Response to it. As well as the applicable law and relevant legal principles. I need to first clarify that stay pending appeal, and indeed any stay of execution, is within the court's discretion, and is not as of right. Besides, an Application for stay pending appeal has to satisfy the three conditions prescribed in Order 42 Rule 6 (2) of the Civil Procedure Rules; and which are as follows:
  - a. The Application ought to demonstrate that the Applicant will suffer substantial loss unless the stay is granted.
  - b. The Application ought to have been made without undue delay.
  - c. The Applicant ought to have offered security for the due performance of a decree.
9. The mere contention that the Applicant is of advanced age, the plea that paying the decree will deplete her retirement savings, and the largeness of the decretal sum, cannot in themselves alone, amount to demonstration of substantial loss.
10. To demonstrate substantial loss, an Applicant ought to persuasively and logically convince the court that the loss likely to be suffered is substantial and unnecessary or oppressive in the circumstances.
11. An Applicant on this kind of Application, cannot merely lament the amount. However humongous. After all it is a legally decreed debt that he/she is obligated to satisfy; and there is a valid decree that has neither been overturned by a superior court, nor reviewed by the same court. Demonstrating that condition is in my considered view, more onerous than the other two subsequential conditions.
12. I find that the Judgement-Debtor has failed to demonstrate that she will suffer substantial loss unless the stay is granted. Hence has failed on it. I further find that he has failed on the remaining two conditions as well.
13. First, a delay of more than one month is in long and the same is inordinate as it has not been explained. Secondly, on a monetary Judgment a money security is more appropriate than a bank guarantee or any other guarantee, hence is to be preferred.
14. As to the filing of a Further or Supplementary Affidavit, that can only be filed with the leave of court. Hence any Further or Supplementary Affidavit filed herein without the Court's Leave, is in terms of Order 51 Rule 14 (3), is one for striking out. Therefore, the Applicant's Further Affidavit having been filed without the leave of this Court, is improperly on record and is hereby accordingly struck out and



expunged from the record. That being the case, its contents shall for purposes of this Application, count for nought.

15. This Application has failed to meet the legal threshold for an Application of this nature. Hence it is hereby dismissed, with costs.

**DATED AND DELIVERED AT NAIROBI ON THIS 5<sup>TH</sup> DAY OF NOVEMBER 2025.**

**PROF (DR) NIXON SIFUNA**

**JUDGE**

