

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO 105 OF 2011

ROBERT THORONJO KARANI.....DECREE-HOLDER

=VERSUS=

JEREMY MIRITI BUNDI.....JUDGMENT-DEBTOR

RULING

1. This ruling is on the Judgement-Debtor's Application dated 22nd July 2025. The same is principally brought under Order 42 Rule 6 (2) of the Civil Procedure Rules. It seeks several orders. Key among them, a stay of execution of judgment and the consequent decree of this honorable court in this suit. The judgment was delivered on 19th June 2020. It is also seeking the lifting of Warrants of Arrest issued by this Court in this suit in execution of the said decree. Those warrants were issued on 1st October 2021. The Application is supported by the Supporting Affidavit of JEREMY MIRITI BUNDI the Judgement-Debtor himself.
2. The Respondent the Decree-Holder has opposed it through a Replying Affidavit sworn by himself as well as in written submissions. He has in his said response and submissions, not only opposed the Application and contended that the Application does not meet the legal threshold for an Application of this nature; but has also therein extensively detailed how the Judgment-Debtor has in these five years since the said judgment, employed all efforts aimed at

frustrating execution and preventing the Decree-Holder from enjoying the fruits of the said judgment.

3. The Judgment-Debtor in the written submissions he filed on this Application, and in this Application, struggled to explain that in the period between the year 2020 when the Judgment was delivered and the year 2025 when this Application was made, him and the Decree-Holder were engaged in negotiations.

Analysis and Determination

4. The legal threshold for an Application for stay pending Appeal, is exhaustively set out in Order 42 Rule 6 (2) of the Civil Procedure Rules; and no persuasion or rationalization of logic, can release an Applicant from fulfilling all the three conditions that the provision has set for an Application for this stay. Which conditions are:

(a) That at Applicant demonstrates that he will suffer substantial loss unless the stay is granted.

(b) That the Application has been brought without undue delay; and

(c) That he has offered security for the due performance of the decree.

5. An Applicant for this stay must fulfill all these three conditions. Not just one. Not just two. But all the three. In the present Application the Applicant has stated that the he will suffer substantial loss if the Warrants of Arrest issued against him in execution of this decree, are executed. I hold that being arrested in execution of a decree does not by

itself, and without any other factors or circumstances, constitute or amount to substantial loss.

6. On the question whether the Application was filed timeously or without undue delay, I hold that a period of five years (between the year 2020 when the judgment was delivered, and then this year 2025 when the Application was made) is a long one. That delay of five years, was not only long, but also prolonged and inordinate. This Application cannot, even by an overstretching of logic, be said to have been brought without undue delay.
7. I also find that the Judgment-Debtor has in this Application, not offered any practically realizable security for the due performance of the decree. He has avoided committing to any reasonable conditions, commitment or undertaking on his proposal of depositing land title documents for the Decree-Holder to hold.
8. In the end, upon considering the Application, the Respondent's response thereto, as well as the parties' respective submissions, I find that this Application has not only failed to meet the legal threshold in Order 42 Rule 6 (2) of the Civil Procedure Rules, but also locks merit, and is also an abuse of the court process.
9. The Application therefore fails, and is hereby accordingly dismissed with costs.

DATED and DELIVERED at NAIROBI on this 20th day of November 2025.

**PROF (DR) NIXON SIFUNA
JUDGE**