

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ELC LAND APPEAL NO E052 OF 2024

SALIM NDONGA T/A EFFORTS
AUTOMOBILES.....APPELLANT/APPLICANT

VERSUS

CHRISTINE WANGARI GICHIGI.....1ST RESPONDENT
LIFEWOOD TRADERS AUCTIONEERS.....2ND RESPONDENT

RULING

1. This ruling is in respect of the Appellant/Applicant’s Notice of Motion application dated 11th July, 2025, seeking the following orders:

- a) *Spent*
- b) *Spent*
- c) *THAT the Honourable Court be pleased to extend the time granted in the ruling delivered on 15th May, 2025 for the Applicant to deposit the sum of Kshs 450,000/= in a joint interest earning account of the advocates on record.*
- d) *THAT pending the hearing and determination of this appeal, the honourable court be pleased to stay execution of the Judgment of Hon. James Wahome Ndegwa delivered on 4th September, 2024 in NAKURU BUSINESS PREMISES AND RENT TRIBUNAL REFERENCE NO E154 OF 2023, SALIM NDONGA T/A EFFORTS AUTOMOBILES VERSUS CHRISTINE WANGARI GICHIGI & ANOTHER and/or any other orders issued therein and/or incidental therefrom.*

e) THAT the Applicant be at liberty, in the alternative, to deposit the security sum of Kshs 450,000/= in court.

f) THAT the costs of this application be in the cause.

2. The application is supported by the annexed affidavit of Salim Ndonga, the Appellant/Applicant sworn on 11th July, 2025, who deponed that on 26th May, 2025, he became aware of this court's ruling rendered on 15th May, 2025. The Applicant deponed that he began mobilizing resources and he has since secured the full sum required by the court. It was his deposition that on 2nd July, 2025, he instructed his advocate to contact the Respondent's advocate to open the said joint account for purposes of compliance, who declined on the ground that the 40-days period granted by the court had lapsed, hence the request for an extension of time to deposit the money required.
3. Christine Wangari Gachege, the 1st Respondent filed a Replying Affidavit sworn on 28th July, 2025, and deponed that the Applicant did not comply with the order of the court which required him to deposit the sum of Ksh 450,000/= in a joint account, therefore it lapsed on 24th June, 2025.
4. According to the 1st Respondent, her counsel could not act on the request to open a joint account as the request was made outside the time appointed by the court and that the stay order had automatically lapsed. Further that the application was brought after an inordinate delay, and urged the court to dismiss the application with costs.

APPLICANT'S SUBMISSIONS

5. Mr. Munyoroku, counsel for the Applicant filed submissions dated 9th October, 2025 and identified the following issues for determination:
 - a) *Whether the Application has merit.*
 - b) *Who should bear the costs of the application?*

6. On the first issue, counsel submitted that the delay in compliance with the order was not deliberate as the period between the lapse of time and the Applicant's readiness to deposit the money was only eight days. It was counsel's submission that the Applicant has demonstrated good faith and diligence in seeking to comply with the court's directions. Further that this Court being a court of equity and justice should not punish the Applicant on a purely procedural delay.

7. Counsel relied on Order 50 Rule 6 and Order 42 Rule 6 (2) of the Civil Procedure Rules and the cases of **Nicholas Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 others [2014] eKLR** and **Butt vs Rent Restriction Tribunal [1982] KLR 417**. On the issue of costs, counsel urged the court to allow the application with costs.

RESPONDENT'S SUBMISSIONS

8. Mr. Ratemo, counsel for the Respondents filed submissions dated 28th July, 2025, and identified the following issues for determination:

a) Whether the Court should grant stay of execution a second time.

b) Whether the Court should extend time for depositing the sum of Kshs 450,000/= in a joint interest earning account.

9. On the first issue, counsel relied on Section 6 of the Civil Procedure Act and submitted that the Court having previously pronounced itself on the issue of stay of execution, the prayer is now *res-judicata*.
10. On the second issue, counsel submitted that the Applicant has not demonstrated why the 40 days given to him in the ruling of 15th May, 2025, were insufficient. Counsel submitted that the appointed time having lapsed on 24th July, 2025, the instant application was brought after an inordinate delay on 15th July, 2025, and no reason whatsoever for the delay has been given.
11. Counsel relied on the cases of **Nicholas Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 others [2014] eKLR** and **Jasbir Singh Rai & 3 others vs Tarlochan Singh Rai & 4 others [2014] eKLR**, and submitted that the Applicant has not laid out any basis for extension of time and urged the court to dismiss the application with costs.

ANALYSIS AND DETERMINATION

12. The issues for determination are:

a) Whether the Court should grant stay of execution a second time.

b) Whether the Court should extend time for depositing the sum of Kshs 450,000/= in a joint interest earning account.

13. The Applicant filed an application for stay of execution dated 7th November 2024 which was heard and a ruling delivered on 15th May 2025. The court granted conditional stay of execution where the Applicant was to deposit Kshs. 450,000/ in a joint interest earning account of the Advocates on record. It should be noted that it is the Applicant who suggested this amount in the Application, which the court applied and granted as prayed.
14. In the current Application the Applicant stated that the delay in complying with the order to deposit the amount in an interest earning account is minimal, and a mere eight days. The Applicant has not told the court the reason why he has not complied with the order. He has just trashed the delay as minimal and inconsequential. A day or in this case eight days would be deemed as inordinate and the Applicant should have explained to the satisfaction of the court, the reason for the delay, which was not done.
15. The grant of stay of execution is discretionary and the Applicant should not take the exercise of the court's discretion in his favour for granted. The court could have refused the grant of a stay of execution in the first instance when the application was brought.
16. The applicant has now brought a similar application for stay of execution with another prayer for extension of time within which to deposit the

amount, and this time seeks an order that the same be deposited in court. This is pure abuse of the court process.

17. The issue as to whether the court should grant a stay order is *res-judicata* as an application for stay was heard and determined. In **Independent Electoral and Boundaries Commission- Vs - Maina Kiai and 5 others, Nairobi CA No. 105 OF 2017** the Honourable court set out the elements that must be satisfied for *Res judicata* to be upheld as:
- a. *The suit or issue was directly and substantially in issue in the former suit.*
 - b. *That former suit was between the same parties or parties under whom they or any of them claim.*
 - c. *Those parties were litigating under the same title.*
 - d. *The issue was heard and finally determined in the former suit.*
 - e. *The court that formerly heard and determined the issues was competent to try the subsequent suit or the suit in which the issue is raised.*

18. In the case of **Shiramba & 31 others v County Government of Uasin Gishu & 3 others [2025] KEELC 7625 (KLR)**, the court held as follows at paragraphs 30-32:

“30. A critical look at the order of the court issued on 09.11.2023 was to the effect that failure to deposit the sum of Kshs. 2,000,000/= in court as security for costs, the stay orders would lapse. The question that

therefore follows is whether upon such automatic lapse of the orders of stay of execution for non-compliance by the 1st respondent depositing the sum of Kshs. 2,000,000/= within the 60 days extended period, whether the orders sought in the instant application are tenable.

31. My answer to the above is in the negative. The orders of stay of execution having lapsed by operation of law for failure to comply with the conditions outlined for the deposit of the sum of Kshs. 2,000,000/= within the 60 days extended period, there is no stay orders in existence and consequently, there are no orders to be set aside, vacated and/or reviewed.

32. The 1st Respondent being in default of the orders issued on 09/11/2023 and extended on 14/12/2023, the natural consequence is that the orders for stay of execution lapsed and execution shall resume.”

19. I have considered the application, the submissions by counsel and find that the Application dated 11th July 2025, lacks merit and is therefore dismissed with costs

DATED, SIGNED AND DELIVERED AT NAKURU THIS 18TH DAY OF NOVEMBER 2025.

M. A. ODENY

JUDGE