



**Kirimi v Imenti South Yeg Self Help Group (Civil Appeal E105 of 2025)  
[2025] KEHC 16516 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16516 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL APPEAL E105 OF 2025  
SM GITHINJI, J  
NOVEMBER 13, 2025**

**BETWEEN**

**EDWARD KIRIMI ..... APPELLANT**

**AND**

**IMENTI SOUTH YEG SELF HELP GROUP ..... RESPONDENT**

**RULING**

1. For determination is the Notice of Motion dated 21/5/2025 under Order 42 Rule 6 of the Civil Procedure Rules, Section 3, 3A and 63 of the [Civil Procedure Act](#), seeking that:
  1. Spent
  2. This honourable court be pleased to grant an order of stay of execution of judgment and decree in SCCOM E 835 OF 2024 at Meru being subject of this Appeal pending the hearing and determination of this Appeal.
  3. The costs of this application be provided for.
2. The application is predicated on the grounds that the Appellant/Applicant is a person of small means with a retail shop which is likely to be paralysed in the event of execution. The Applicant is a member of the Respondent with enough contributions and shares, and thus, the security for the compliance of the judgment is guaranteed. The appeal, which has very high chances of success, will be rendered nugatory, unless the orders sought are granted.
3. The Respondent opposed the application vide a replying affidavit sworn by Patrick Kariuki, its Chairman on 13/6/2025. He faulted the Applicant for failing to demonstrate what substantial loss, harm, damage or prejudice he will suffer if he pays the decretal sum of Khs. 109,000. The Applicant is further faulted for failing to offer any security, and in any event, the Respondent's members are capable



of making a refund to the Applicant in the unlikely event the appeal succeeds, hence there are no valid reasons to deny them the fruits of their lawfully obtained judgment.

4. The application was canvassed by way of written submissions, which were duly filed by counsel for both parties.

#### **Determination**

5. Order 42 Rule 6 (2) of the Civil Procedure Rules provides as follows; “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.”
6. The application was filed on 22/5/2025, while the impugning judgment was delivered on 29/4/2025. That one-month delay is not so inordinate as to be deemed unreasonable.
7. The cornerstone consideration in every application for stay is substantial loss, and the burden of proof lies on the Applicant, as was held by the Court of Appeal in *Kenya Shell Limited v Benjamin Karuga Kibiru & another* [1986] KECA 94 (KLR) that; “It is usually a good rule to see if order XLI rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the corner stone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore without this evidence it is difficult to see why the respondents should be kept out of their money.”
8. The Applicant contends that the Respondent has commenced execution, which will occasion him substantial loss and render his small retail shop at Nkubu, which is his only source of income, non-operational. In rejoinder, the Respondent accuses the Applicant of failing to furnish security for the due performance of the decree and thus undeserving of the exercise of discretion in his favour.
9. A money decree is not, by itself, a sufficient ground for stay of execution. The Applicant must demonstrate that:-
  1. Substantial loss may result if stay is not granted, such as the inability to recover the money if the appeal succeeds.
  2. The Respondent may be unable to refund the decretal sum; commonly referred to as the Respondent being a “man of straw.”
  3. Security for the due performance of the decree is provided.
10. There is no indication that the decretal sum will be unrecoverable from the Respondent, in the eventuality of a successful appeal.
11. I thus find that the Applicant has failed to establish what substantial loss he stands to suffer if the sought stay of execution is declined.
12. Accordingly, the application dated 21/5/2025 is in want of merit and is hereby dismissed.  
Mention on 14/4/2026.

**DATED AND DELIVERED AT MERU THIS 13<sup>TH</sup> DAY OF NOVEMBER, 2025**

**S.M. GITHINJI**



## **JUDGE**

Appearances:

Mr. Nyaga holding brief for Mr. Kiogora

Arithi for the Respondent.

Mr. Gikunda Anampiu for the Applicant/Appellant (absent).

