



REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT MERU

CIVIL APPEAL NO. E089 OF 2025

**KENNEDY KAUNDA KISILU T/A
KIND MEDICAL SERVICES.....
APPELLANT**

VERSUS

**TRANSWIDE PHARMACEUTICALS
LIMITED
.....RESPONDENT**

R U L I N G

1. For determination is the Notice of Motion dated 25/4/2025 under Sections 1A, 1B, 3A and 63(e) of the Civil Procedure Act, Order 22 Rule 22 of the Civil Procedure Rules and Articles 50 and 159 (2) of the Constitution seeking that:
 1. Spent
 2. Spent
 3. This Honourable court be pleased to issue an order for stay of execution of the Ruling delivered on 29th April, 2025 in MERU SMALL CLAIMS E917 OF 2024

(TRANSWIDE PHARMACEUTICALS LIMITED -VERSUS- KENNEDY KAUNDA KISILU T/A KIND MEDICAL SERVICE) pending the hearing of the appeal.

4. Spent

5. This Honourable court be pleased to issue an order of Injunction restraining the Respondent, their agents, servants and/or employees from selling Motor Vehicle Registration KBX 773 S pending the hearing and determination of the Appeal.

6. Costs for this application be provided for.

2. The application is premised on the grounds that the Appellant wishes to appeal against the ruling of 29/4/2025 because he feels that he was denied an opportunity to be heard. The Respondent has already attached Motor Vehicle KBX 773 S and is in the process of selling it by way of a public auction, and unless the orders sought are granted, the Appellant will suffer irreparable loss, damage and untold suffering. The application has been brought without unreasonable delay, and the appeal will be rendered an academic exercise if execution proceeds.

3. The Respondent filed grounds of opposition dated 3/6/2025 that;

1. The Appellant seeks to appeal against the order of Hon. L.W Mouti (RM) dismissing his application. This is a negative order not capable of being stayed because there is nothing that the Applicant has lost.
2. The Application has not met the legal threshold for the grant of the Orders sought therein Under Order 42 Rule 6 and 7 of the Civil Procedure Rules 2010.
3. The Applicant has not presented sufficient evidence as well as factual grounds for the grant of the Orders Sought.
4. In any case, the execution is a legal process supervised by the Court and the appellant cannot allege to suffer substantial loss from a legality.
5. The Respondent has a huge financial muscle to compensate the Appellant by way of damages in the unlikely event that his appeal succeeds.
6. The Application dated the 25th of April 2025 is therefore bad in law, an abuse of the court process

and ought to be dismissed with costs to the Respondent.

4. The application was canvassed by way of written submissions which were only filed by counsel for the Respondent.

Determination

5. The singular issue for determination is whether the orders sought should be granted.
6. 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.”***
7. The order sought to be stayed was a dismissal of the Appellant’s applications dated 2/4/2025 and 9/4/2025. The

question that begs is whether a dismissal is a positive order capable of execution.

8. The Court of Appeal in **AG v James Hoseah Gitau Mwara [2014] eKLR** expounded that in order for a court to exercise its discretion to grant stay, it must ask itself the question whether there is anything capable of being stayed in the ruling sought to be impugned.
9. The Court of Appeal in **Kaushik Panchamatia & 3 Others v Prime Bank Limited & Another [2020] eKLR** espoused that; ***“...A negative order is incapable of being stayed because there is nothing to stay. It therefore, follows that in light of the above threshold we have no mandate to grant a stay order in the manner prayed for by Applicants.”***
10. I thus find that the trial court’s order of 29/4/2025 was a dismissal, which is by its nature a negative order incapable of being stayed.
11. The upshot from the foregoing analysis is that the application dated 25/4/2025 is in want of merit and it is accordingly dismissed with costs to the Respondent.

DATED AND DELIVERED AT MERU THIS 6TH DAY OF NOVEMBER, 2025

S.M. GITHINJI

JUDGE

APPEARANCE:-

Mr. Chebii for the Respondent.

Mr. Nyaga for the Appellant.