

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NANYUKI

ELC APPEAL NO. E025 OF 2024

GEDION

CHRIS

MAINA

THUKU.....APPELLANT/APPLICANT

-VERSUS-

JOHN NGARI

MURIITHI.....1ST

RESPONDENT

NANYUKI EXPRESS CABS SERVICES

SACCO

LIMITED.....2ND

RESPONDENT

RULING

1. Before me is a Notice of Motion application dated 18.9.2025 where the Applicant/Appellant is seeking an order of stay of execution of the judgment delivered in **Nanyuki CM ELC NO 109 OF 2018** on 21.10.2024 pending the hearing and determination of the appeal. The Applicant avers that the judgment was delivered in favour of the 1st Respondent for the sum of Kshs.752,027/- together with interests at commercial rates and costs of the suit.

2. That the Applicant lodged the appeal specifically challenging the award of interest at commercial rates. However, execution is now underway whereby the 1st Respondent has instructed Dancy Auctioneers to proclaim Applicants' goods where the claimed amount is Kshs.5,565,803/-. The Applicant contends that they are ready to offer security like a title deed, a log book or to pay the Kshs.752,000/- in court or in a joint account.
3. In opposition thereof, the 1st Respondent filed a replying affidavit dated 3.11.2025 where he contends that the Applicant has not met the criteria set out under **Order 42 Rule 6 of the Civil Procedure Rules** as he has not demonstrated that the 1st Respondent will be unable to refund the amounts once if the appeal is successful, that the Applicant has merely stated that the amount is colossal without indicating how he stands to be prejudiced and that the delay of over 11 months has not been explained, adding that the issue of security has only come from the bar but was not addressed in the application.
4. I have considered the rival arguments, submissions and case law proffered herein for and against the grant of a stay of

execution of the judgment delivered on 21.10.2024. The law governing matters of stay of execution of judgments and orders is to be found under **Order 42, Rule 6 of the Civil Procedure Rules.**

5. However, the court has discretion to grant or to refuse an application for stay of execution pending appeal in that the court when granting a stay, it has to balance the interests of the Applicant with those of the respondent. In determining this balance, the court gives due consideration to the three criteria set out under the above mentioned provisions of law.

6. In **Selestica Limited v Gold Rock Development Ltd [2015] KLR**, the court stated that;

“Stay of execution pending appeal is governed by Order 42 Rule 6 of the Civil Procedure Rules. The power to grant an application for stay of execution pending appeal is a discretionary one on sufficient cause being shown....”

7. While in the Court of Appeal case of **Butt v Rent Restriction Tribunal [1982] KLR 417**, cited in **Amal Hauliers Limited v Abdulnasir Abukar Hassan [2017]**

eKLR, the court gave guidance on how a court should exercise discretion and held that:

“1. The power of the court to grant or refuse an application for a stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal.

2. The general principle in granting or refusing a stay is; if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverse the judge’s discretion.

3. A judge should not refuse a stay if there are good grounds for granting it merely because in his opinion, a better remedy may become available to the Applicant at the end of the proceedings.

4. The court in exercising its discretion whether to grant [or] refuse an application for stay will consider the special circumstances of the case and unique requirements. The special circumstances in this case were that there was a large amount of

rent in dispute and the appellant had an undoubted right of appeal.

5. The court in exercising its powers under Order XLI rule 4(2)(b) of the Civil Procedure Rules, can order security upon application by either party or on its own motion. Failure to put security for costs as ordered will cause the order for stay of execution to lapse.”

8. Upon perusal of the judgment of the trial court, the memorandum of appeal as well as the application before this court, it is apparent that the crux of the matter relates to the award of “Interests at commercial rates from year 2007 till payment in full”. The figures termed as interest were unknown as at the time of the delivery of the judgment. According to the proclamation made by Dancy auctioneers as per the document availed by the Applicant, the amount being demanded as at 12.9.2025 is Kshs.5,565,806/- plus auctioneers fees of Kshs.365,950/-. The respondent has not refuted the said document.

9. It is clear beyond peradventure that the applicant could not have lodged the application at the time the appeal was filed

as the actual computation of the figures amounting to 5 million plus Kenyan shillings is a recent phenomenon.

10. Courts of law exist to administer justice and in so doing they must of necessity balance between competing rights and interests of different parties but within the confines of law, to ensure that the ends of justice are met., See **Dickson Muricho Muriuki v Timothy Kagonde Muriuki & 6 others [2013] eKLR.** In the case at hand, I find that the ends of justice warrant issuance of the stay orders on the disputed issue relating to interest. However, I find no good reason as to why the sum of Kshs.752,027/- should not be paid to the respondent.

11. In the circumstances, I hereby grant a conditional STAY OF EXECUTION in the following terms;

1) The applicant is to pay the sum of Kshs.752,027/- to the respondent within 45 days from the date of this ruling.

2) The respondent is directed to avail to the applicant details of the account in which the amount Kshs. 752 027 is to be deposited within 14 days from the date of this ruling, failure to which, the applicant is

at liberty to deposit the aforementioned amount in court within the given period of 45 days.

3) The costs of the application shall abide the outcome of the appeal.

DATED, SIGNED AND DELIVERED AT NANYUKI THIS 6TH DAY OF NOVEMBER 2025 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of;

Nancy CA

M/S Nasambu H/B for Mbaabu for applicant/Appellant

Mr. Billy Njanji for the Respondent