



REPUBLIC OF KENYA



KENYA LAW
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**AGW v HAG (Civil Appeal E124 of 2025)
[2025] KEHC 17214 (KLR) (Civ) (24 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17214 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E124 OF 2025

CJ KENDAGOR, J

NOVEMBER 24, 2025

BETWEEN

AGW APPELLANT

AND

HAG RESPONDENT

(Being an appeal from the Ruling and Order of Honourable Hassan Daffa Omar delivered at Nairobi on the 6th August, 2025 in Kadhi's Court Divorce Cause No. E072 of 2022)

RULING

1. This appeal is pending hearing and determination. It emanates from the Ruling and order made at the Nairobi Kadhi's Court, Divorce Cause No. E072 of 2022, delivered on 6th August, 2025.
2. In that Ruling, the Hon. Kadhi awarded the Respondent adjournment costs amounting to Kshs. 70,000/-, payable before the hearing date as fixed in the file.
3. The Appellant has currently moved the Court through a Notice of Motion application dated 12th August, 2025.
4. The application seeks a stay of execution on the costs awarded and a stay of proceedings in the Divorce Cause currently before the Kadhi's Court, pending the hearing and determination of the appeal.
5. The Appellant challenges the order on costs and has argued that unless the stay orders are granted, it would impede his fundamental right to a fair hearing.
6. The Respondent urged the court to uphold the ruling of Hon. Kadhi and stated that she would be prejudiced if the sought orders are granted.



7. According to the Respondent, the Applicant's actions are meant to cause a delay in the process and prevent the successful determination of the suit.

Analysis and determination

8. The Court has a discretionary power to grant or refuse a stay, and this power is to be exercised judiciously, not arbitrarily.

9. Order 42 Rule 6 (1) and (2) of the Civil Procedure Rules provides as follows;

“(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

(2) No order for stay of execution shall be made under sub-rule (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.”

10. The application was made without any undue delay.

11. Having considered the rival arguments, the Court is satisfied that the Appellant has demonstrated that he has an arguable appeal. The Court is further persuaded that, unless a stay of execution is granted regarding the costs, the Appellant faces a substantial risk of loss, as he may be denied a hearing due to the order requiring payment of the costs before the hearing date, which may lead to an injustice if the appeal is successful. Consequently, the stay of execution is granted pending the hearing and determination of the appeal.

12. On stay of the proceedings, the decision in *Makanda v Omusolo* (Environment & Land Case 165 of 2006) [2025] KEELC 123 (KLR), C.K. Nzili, J, had this to say regarding a similar prayer as the present one;

“The discretion to stay proceedings is an equitable one exercised on sound grounds for it impedes on the right to fair hearing, access to justice and the constitutional mandate of courts to expedite hearing and disposal of suits. Stay of proceedings is different from stay of execution. It can only be granted in exceptional circumstances and not as a matter of right. It is a serious, grave and fundamental interruption of the right of parties to conduct their litigation on merits. It can only be imposed sparingly and only where the proceedings are shown to be frivolous, vexatious, groundless or raising no cause of action in law or equity...”



13. The preferred appeal relates to an interlocutory order on costs. This issue is distinct from the substantive subject matter of the main suit. There are no exceptional circumstances presented by the appellant as to why this order should issue. To halt the entire proceedings based on a dispute over costs would be disproportionate and prejudicial to the Respondent's right to a fair and timely trial.
14. Disposition;
 - a. The Application succeeds in part; an order of stay of execution is granted pending the hearing and determination of the appeal;
 - b. The prayer for stay of proceedings of the Divorce Cause before the Kadhi's Court is declined;
 - c. The Appellant shall file and serve the record of appeal within 21 days.
 - d. Costs of this application shall be in the cause.
15. It is so ordered.

DATED, DELIVERED AND SIGNED AT NAIROBI THROUGH THE MICROSOFT TEAMS ONLINE PLATFORM ON THIS 24TH DAY OF NOVEMBER, 2025.

.....

C. KENDAGOR

JUDGE

In the presence of:

Court Assistant: Beryl

Parties absent

