

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
CIVIL APPEAL NO. E199 OF 2025

ODHIAMBO OLIVER NYADIMO APPELLANT/APPLICANT

- VERSUS -

RURAL URBAN PROGRESSIVE EMPOWERMENT ... 1ST RESPONDENT

DAVID GARI GARI 2ND RESPONDENT

ABDULMALIK ODUOR OGIDHO 3RD RESPONDENT

DVID ONCHOKA OENGA 4TH RESPONDENT

(Being an appeal from the ruling and order of Hon. L. Kiniale SPM delivered on the 28/8/2025 in Nyando SPMCC No. 31 of 2020, David Gari Gari v Rural Urban Progressive Empowerment (RUPE) & Anor)

RULING

1. This is a ruling on the applicant’s Motion on Notice dated **17/9/2025**. The same was brought under ***Order 42 Rule 6 of the Civil Procedure Rules***. The same sought the stay of execution of the order of the lower court made on **28/8/2025** pending appeal.
2. The Motion was supported by the affidavit of **Odhiambo Oliver Nyadimo** sworn on **17/9/2025**. He averred that the lower court had made an order in **CM Case Nos. 31 and 32 of 2020** on **28/8/2025** on a Notice to Show Cause and held that a director of the 1st respondent be personally liable to settle **Kshs.734,034/-** owed by the said entity.

3. That the entity was an NGO yet he was condemned to personally pay its debt and or be committed to civil jail. That he stood to suffer irreparable harm by way of committal to civil jail if the stay is not granted. That the appeal has prospects of success. That the application had been lodged expeditiously.
4. The application was opposed vide the replying affidavit of **Dick Anyul** sworn on **27/10/2025**. It was averred that the lower court had directed the applicant to settle the decretal sum of **Kshs.734,034/-** owed.
5. That the Motion was fatally defective as the Memorandum of Appeal was lodged in breach of **Section 75 (1) (g) of the Civil Procedure Act** and **Order 43 Rule (1) (3) of the Civil Procedure Rules**. That the applicant required leave to appeal which he had not obtained. That without a proper appeal, no stay of execution pending appeal can issue.
6. That in any event the applicant had not satisfied the requirements under **Order 42 Rule 6 of the Civil Procedure Rules**. That the applicant has been given several opportunities to show cause but wilfully failed to demonstrate any efforts undertaken to satisfy the decree. That the application should therefore be dismissed.
7. The application was orally argued by **Mr. Okore** on **28/10/2025** in the absence of the Counsel for the respondent. I have considered the submissions on record.
8. This is an application for stay of execution pending appeal under **Order 42 Rule 6 of the Civil Procedure Rules**. It is an order to be made discretionally but like all discretions, it must be made judiciously. It must be determined on well known and settled principles.

9. The principles applicable are well known, that an application should be made timeously, that an applicant must demonstrate that he will suffer substantial loss if the stay is not granted and finally, security must be offered for the due performance of the order of that might ultimately be found to be binding upon such applicant.
10. On delay, the order sought to be impugned was made on **28/8/2025**. The present Motion was lodged on **17/9/2025**. That is a period of about 20 days. By all means, the Motion was made timeously.
11. On substantial loss, it was contended that if the stay is not granted the applicant might be committed to civil jail thereby loss his liberty and suffer irreparable harm. Although committal to civil jail is a lawful legal process, if the applicant were to be so committed and then the appeal succeeds, he would have suffered substantial loss as it would be a fact that cannot be reversed. I am satisfied that substantial loss has been demonstrated.
12. The third limb is offer for security for the due performance of the order that might ultimately be found to be binding upon the applicant in the event the appeal does not succeed. On this one, no security was offered. Without having offered, any security for the due performance as aforesaid denies the applicant the benefit of the order sought.
13. However, since the order of stay is discretionally, I will exercise my discretion in his favour and order that there be a stay provided he gives security to the tune of the decretal amount in satisfaction of the provisions of ***Order 42 Rule 6(2) of the Civil Procedure Rules***.
14. Accordingly, I allow the application and grant the orders of stay as sought on condition that the applicant deposits in an interest earning account in the joint

names of the advocates for the parties, a sum of **Kshs.734,034/-** within 30 days of today. In default, the order of stay herein shall forthwith lapse. Costs to be in the appeal.

It is so ordered.

DATED and **DELIVERED** at Kisumu this **26th** day of **November, 2025**.

A. MABEYA, FCI Arb

JUDGE