



**Systemick Consultancy Limited v Charles (Civil Appeal E107 of 2025)
[2025] KEHC 17238 (KLR) (20 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17238 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E107 OF 2025
HM NYAGA, J
NOVEMBER 20, 2025**

BETWEEN

SYSTEMICK CONSULTANCY LIMITED APPELLANT

AND

FLORENCE NCABIRA CHARLES RESPONDENT

RULING

1. This ruling relates to two applications. The first application in time is dated 30/5/2025, in which the appellant//applicant seeks the following orders:-
 - a. Spent.
 - b. That there be a stay of execution of the Judgment and all ensuing orders and/or decree issued in Githongo Law courts Civil Suit No. E016 of 2024 and on 23/04/2025 pending the hearing and determination of this application.
 - c. That there be a stay of execution of the Judgment and all ensuing orders and/or decrees issued in Githongo Law Courts Civil Suit No. E016 of 2024 on 23/4/2025 pending the hearing and determination of the appeal; Meru HCCA E107 of 2025.
 - d. That costs of this application be in the cause.
2. The 2nd application is dated 5/6/2025 which seeks the following orders:-
 - a. Spent.
 - b. That this Honourable court be pleased to review and/or vary Paragraph 4 of its Orders dated 3rd June, 2025, and order a stay of execution of eh decree of the lower court on condition that the applicants deposit Ksh. 1,000,000/= being approximately one-third of eh decretal sum,



into a joint interest -earning account to be held by the Advocates on record within 30 days, as opposed to payment to the respondent.

- c. That the costs of this application be in the cause.
3. The first application is premised on the grounds set out on the face of it and the supporting affidavit sworn by Petr Kamau, a Legal Officer at Britam General Insurance Limited.
4. He avers that the company had insured motor vehicle registration number KDM 252Z driven by 2nd appellant belonging to the 1st appellant herein under an Insurance policy between the two parties. That judgment was delivered in the Lower Court for a sum of Ksh. 3,538,250/= together with costs. That the Insurance company aggrieved by the said Judgment and has lodged an appeal herein. That the appellants stand to suffer grave prejudice unless stay of execution is stayed. That the applicants are willing to provide security of performance of eh Judgment and deposit the amount in court within 90 days of the court's orders.
5. In response thereto, the respondent swore a replying affidavit sworn on 13th June, 2025, which affidavit also appears to have been also a response to the 2nd application.
6. In a nutshell, the respondent states that after judgment was passed in the lower court, the applicants sought and were granted 60 days stay of execution. That having been granted such stay, then the application is res-judicata.
7. The respondent further avers that the application is an attempt to frustrate her from enjoying the fruits of the judgment. That being a discretionary order, the court has to balance between the right of the applicants who have appealed and the respondent's right to enjoy such fruits of the judgment.
8. When this application came under certificate of urgency before me, for directions, I ordered the applicants to pay Ksh. 1,000,000/= to the respondent within 30 days. These orders of 3rd June, 2025 prompted the applicant to file the 2nd application seeking review thereof.
9. The 2nd application is supported by the affidavit of the said Peter Makau on behalf of the Insurance Company. It is the applicant's case that the orders of 3rd June, 2025 place them in a precarious position for the reason that if the appeal is successful, they may not be able to recover any amount paid to the respondent. They thus seek to have the said amount deposited in a joint interest earning account.
10. As I stated earlier, the respondent basically swore the same affidavit in response to the 2nd application, so I will not reiterate the contents. She also filed grounds of opposition to the said application, which I shall refer to given that the application relates to the orders granted ex-parte.
11. I think that I should first begin with the second application. Thereafter, I will deal with the other prayers left in the earlier application.
12. In support of the application for review, the parties filed submissions.
13. For the applicant it is submitted that paragraph 4 of the orders issued on 3rd June, 2025 contain an error apparent on the face of the court record in that the order requires the applicants to pay directly to the respondent a sum of Ksh. 1,000,000/=. That the common and consistent practice is that conditional stays in money decrees are normally secured by ordering the sum to be deposited in court or a joint account in the name of the advocates for the parties, precisely to avoid the risk that should the appeal succeed, the decree holder may be unable to refund the same.
14. In support of this argument, the applicants cited Mwaura Karuga t/a Limit Enterprises – Versus- Kenya Bus Services Limited and 4 Others (2015) KEHC 405, KLR.



15. Citing the case of Zablou Mokua – Vs- Solomon M. Shati & 3 Others (2016) KEHC 683 (KLR), the applicants state that there is sufficient cause to review the orders sought.
16. Also cited was Muyodi – Versus – Industrial & Commercial Development Corporation & another (2006) EA 243.
17. The applicants submit that upon review, the court should order that the said Ksh. 1,000,000/= be deposited in a joint interest earning account, pending the determination of the Appeal.
18. In response, the applicant’s case and submissions, is that there is no apparent error on the face of the court record to warrant a review of the orders in question. That what is being advanced is a further tactic to delay and frustrate the respondent, by going up several fronts of litigation.
19. The respondent further submits that while this court is not called upon to delve into the merits of the appeal at the interlocutory stage, the likelihood of success of the appeal is a factor to be considered. That grant of stay of execution is not by right but a discretionary order.
20. As to the parameters of an application for review, the respondent cited John Mundia Njoroge & 9 Others – versus – Cecilia Muthon Njoroge & Another (2016)eKLR. Citing the case of Hinga & Another – Versus- The Honourable Attorney General (1995)eKLR, the respondent termed the application an abuse of the court process.

1. As has been submitted by the parties, the power of review is found under Section 80 of the [Civil Procedure Act](#) and Order 45 Rule 1 of the Civil Procedure Rules. They provide as follows:-

Section 80.

Any person who considers himself aggrieved –

- (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- (b) By a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or order therein as it thinks fit”.

Order 45 Rule 1:-

“45

- (1) Any person considering himself aggrieved
 - (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 - (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.



- (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies to the review”.
21. The authorities cited by the parties have correctly interpreted the said provisions. The question to be answered is whether there is sufficient cause shown to warrant a review of the orders issued on 3rd June, 2025.
22. In respect to the said orders, the court was exercising its discretion under Order 42 Rule 6 of the Civil Procedure Rules which provides as follows:-
- “(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.”
23. In issuing the said orders, the court took account of several factors, even from just a plain look at the pleadings. These include the following:-The Judgment of the Lower Court.The Memorandum of Appeal
24. The discretion of the court to make orders of security for stay of execution are not fettered, provided the court abides by Order 42 Rule 6 of the Rules.
25. Therefore, the applicants cannot seek to place the court in a pigeon hole, or a straight jacket, in the name of consistent practice. Each case has to be looked at from its own set of circumstances. The fact that the court “departed” from the so-called normal practice (which does not exist) is not an error on the face of the record that warrants a review.
26. Once an appeal is filed this court is entitled to look at it even before the parties address it. That is why for instance the court is empowered to summarily dismiss an appeal under section 79 B of the *Civil Procedure Act*.
27. As stated by the respondent, one of the factors to be considered by the court as the likelihood of success of the Appeal. A look at the Judgment shows that the applicants never tendered any evidence during the trial regarding the manner in which the accident occurred. This was clearly the reason the trial court found them 100% liable. It is thus even in the unlikely event that the appeal is to succeed, the finding on liability is to change.
28. One gets the feeling that the appeal is merely a quantum of damages awarded by the lower court, but clothed as an appeal against the entire judgment.
29. The court has to balance between the rights of the parties in the matter and having done so, it cannot be termed an error apparent on the face of the record.
30. For the foregoing reason, I find that the application dated 5th June, 2025 lacks merit and it is dismissed with costs.



31. I now turn to the initial application for stay of execution pending appeal.
32. I have dully considered the arguments by the parties. I will not rehash their submissions save to state that they have correctly cited the provisions of Order 42 rule 6 of the Civil Procedure Rules.
33. The respondent avers that the matter is res-judicata since the trial court had already granted a 60 day stay of execution.
34. On this point, reference is made to Order 42 Rule 1 of the Civil Procedure Rules which 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 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.
35. As can be seen, this court's jurisdiction is invoked where the Lower Court has granted or not granted orders of stay. Thus, the argument that the application is res-judicata cannot stand.
36. That said, I have considered the prayers by the applicants. They seek 90 days to effect the furnishing of the security, from the date of such order. Adding to the 60 days that they got in the lower court, that adds up to 150 days or 5 months.
37. In agreement with the respondent this is clearly a tactic to delay the matter for as long as is possible.
38. Bearing in mind that I had already ordered payment of Ksh. 1,000,000/= to the respondent, I find that the circumstances don't call for any further security.
39. Therefore, the following orders do issue:-
 - a. The applicants are given an extension of time of 30 days to comply with the payment of the Ksh. 1,000,000/= to the respondent.
 - b. In default, the stay orders will lapse automatically without further reference to the court, and the respondent is at liberty to execute the lower court's decree.
 - c. As regard the appeal, the applicants are given 60 days to file and serve the record of appeal.
 - d. A date for compliance will be given after delivery of this ruling.

DATED, SIGNED & DELIVERED AT MERU THIS 20TH DAY OF NOVEMBER, 2025.

H. M. NYAGA

JUDGE

