



**China City Construction Company Limited & another v Karisa (Suing as Administrator and Legal Representative of the Estate of Didlora Mwaka Mwangala) (Civil Appeal E105 of 2023) [2025] KEHC 17575 (KLR) (28 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17575 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MALINDI  
CIVIL APPEAL E105 OF 2023  
M THANDE, J  
NOVEMBER 28, 2025**

**BETWEEN**

**CHINA CITY CONSTRUCTION COMPANY LIMITED ..... 1<sup>ST</sup> APPELLANT**

**KENNEDY SETE KIPROTICH ..... 2<sup>ND</sup> APPELLANT**

**AND**

**MBURA HERBERT KARISA ..... RESPONDENT**

**SUING AS ADMINISTRATOR AND LEGAL REPRESENTATIVE OF THE  
ESTATE OF DIDLORA MWAKA MWANGALA**

**RULING**

1. By an Application dated 9.1.25, the Appellants seek stay of execution of the judgment of this Court delivered on 19.12.24 pending the hearing and determination of their intended appeal.
2. The Appellants state that they are dissatisfied with the judgment in question and have filed and served a notice of appeal. Further, that they are willing to file the appeal as soon as they are supplied with certified proceedings, for which they have already applied. They further stated that they filed the Application without unreasonable delay. The Appellants further contend that they have an arguable appeal with overwhelming chances of success. Should stay not be granted therefore, the appeal will be rendered nugatory and the Appellants will suffer substantial loss and prejudice that cannot be remedied by an award of damages or compensation. On the other hand, that the Respondent will not suffer any prejudice as the decretal amount is deposited in a joint account of the parties' advocates.
3. The Respondent opposed the Application vide grounds of opposition dated 15.1.25. The grounds are that the Application is a non-starter, un-meritorious and an abuse of the court process. Further, that the Application offends the law and should be struck out for want of form and substance.



4. Parties filed their written submissions which I have duly considered together with the authorities cited.
5. It is the Respondent's contention that the Application is a non-starter as the notice of appeal is not a notice to the Court of Appeal but an appeal to this Court. As such, no notice of appeal has been filed.
6. Rule 61 of the Court of Appeals Rules makes provision for the filing of a notice of appeal. Sub rule (1) provides:

A person who desires to appeal to the Court shall give notice in writing, which shall be lodged in six copies with the registrar of the superior Court at the place where the decision against which it is desired to appeal was given, within fourteen days after the date of that decision, and the notice of appeal shall institute the appeal.

7. It is clear that a notice of appeal is filed in the court that made the decision to be appealed against, and in the cause in which the decision was made. Form B that is prescribed for a notice of appeal indicates that the heading thereof is as in the proceedings appealed from. The notice of appeal exhibited by the Appellants is in accordance with the law. Accordingly, the contention that the notice of appeal is incompetent, is clearly a misapprehension of the law.
8. I now turn to the prayers for stay before me. The Appellants seek to stay the judgment of this Court of 19.12.24. In the judgment, the Court dismissed the appeal filed by the Appellants against the judgment in Kaloleni CMCC No. E046 of 2021, for want of merit. The dismissal under challenge, is in the nature of a negative order.
9. It is trite law that a negative order is incapable of execution. In the case of Registered Trustees, Kenya Railways Staff Retirement Benefits Scheme v Millimo, Muthomi & Co. Advocates & 2 others (Civil Appeal (Application) E383 of 2021) [2022] KECA 491 (KLR) (18 February 2022) (Ruling), the Court of Appeal considered an application for stay of execution of a negative order and stated:
  17. We start by acknowledging the fact that the ruling appealed against was a compounded one dealing with 2 applications, which yielded two different results. The first application, which was made by the applicant, was dismissed. As submitted by learned counsel for the 1st respondent, the position taken by this Court in respect of applications for stay of execution in respect of negative orders is clear. Negative orders cannot be stayed.
10. The Court of Appeal went on to state:

Further, in the more recent case of Kenya Commercial Bank Limited vs Tamarind Meadows Limited & 7 Others [2016] eKLR, the Court of Appeal expounded on stay of execution stating:

16. In Kanwal Sarjit Singh Dhiman vs Keshavji Juvraj Shah [2008] eKLR, the Court of Appeal, while dealing with a similar application for stay of a negative order, held as follows: "The 2nd prayer in the application is for stay (of execution) of the order of the superior court made on 18th December, 2006. The order of 18th December, 2006 merely dismissed the application for setting aside the judgment with costs. By the order, the superior court did not order any of the parties to do anything or refrain from doing anything or to pay any sum. It was thus, a negative order which is incapable of execution save in respect of costs only (see Western College of Arts & Applied Sciences vs. Oranga & Others [1976] KLR 63 at page 66 paragraph C)."



11. In the instant case, this Court did not in the impugned judgment order any of the parties to do or to refrain from doing anything, in respect of which an order for stay of execution can be granted. Rather, the Court dismissed the appeal before it. In the premises, there is nothing to stay. I accordingly find that the Application dated 9.1.25 lacking in merit and the same is dismissed with costs to the Respondent.

**DATED, SIGNED AND DELIVERED IN MALINDI THIS 28<sup>TH</sup> DAY OF NOVEMBER 2025**

**M. THANDE**

**JUDGE**

