



**Kinyanjui Njuguna & Co Advocates v Board of Trustees, National
Social Security Fund (Miscellaneous Application 182 of 2017)
[2025] KEHC 17862 (KLR) (Commercial and Tax) (28 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17862 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION 182 OF 2017
FG MUGAMBI, J
NOVEMBER 28, 2025**

BETWEEN

KINYANJUI NJUGUNA & CO ADVOCATES RESPONDENT

AND

**THE BOARD OF TRUSTEES, NATIONAL SOCIAL SECURITY
FUND APPLICANT**

RULING

1. Before the Court for determination is a Notice of Motion dated 20th December 2024, in which the applicant seeks an order staying the execution of the judgment delivered on 22nd November 2024, pending the hearing and determination of the intended appeal. The application is supported by the affidavit of Ettah Muango, sworn on the same date.
2. The basis of the application is the ruling of this Court dated 22nd November 2024, wherein judgment was entered in favour of the respondent in the sum of Kshs. 42,585,500.00. The applicant contends that the respondent had already received Kshs. 20,484,575.00 prior to the judgment, and that awarding the full amount results in a duplication of payment. The applicant further explains that their failure to respond to the application which culminated in the said ruling was due to complications arising from double registration.
3. The applicant maintains that the appeal raises arguable issues and that, should execution proceed, they stand to suffer substantial loss given the magnitude of the sums involved, which constitute public funds.
4. The application is opposed through a Replying Affidavit sworn on 30th January 2025 by Mr. Kinyanjui Theuri. The respondents contend that this Court became functus officio upon delivery of its ruling



dated 22nd November 2024, and that entertaining the present application would amount to the Court sitting in review or appeal of its own decision. Nonetheless, the respondents expresses willingness to accept the deposit of the entire decretal sum or three-quarters thereof as security, should the Court be inclined to grant a stay of execution.

5. The application was canvassed by way of written submissions which I have equally considered alongside the application and response.

Analysis and determination

6. The issue that falls for this Court's determination is whether the application is merited. The principles governing the grant of stay of execution pending appeal are well established. As observed in *RWW V EKW*, [2019] eKLR, the purpose of stay pending appeal is to preserve the subject matter in dispute and ensure that the appellant's right of appeal is not rendered illusory. The court must, however, balance this right against the respondent's entitlement to enjoy the fruits of their judgment, while ensuring that no party suffers irreparable prejudice.
7. Under Order 42 Rule 6 of the Civil Procedure Rules, an applicant must satisfy the following conjunctive conditions:
 - i. That the application has been made without unreasonable delay;
 - ii. That substantial loss may result to the applicant unless the order is granted; and
 - iii. That the applicant is willing to provide such security as the court may order for the due performance of the decree.
8. On the first limb, the judgment sought to be stayed was delivered on 22nd November 2024, while the present application was filed on 20th December 2024, less than a month later. In my view, the application was filed within a reasonable time and is therefore timely. In any case, the issue of delay has not been raised by the respondent.
9. The applicant expresses concern that the decretal sum is substantial and comprises public funds held in trust for the general public. They further argue that the respondent has not demonstrated capacity to refund the amount should the appeal succeed. These apprehensions, in the context of public accountability and fiduciary responsibility, are not unfounded and warrant consideration.
10. The respondent has proposed that the applicant be directed to pay two-thirds of the decretal sum directly to the respondent and to deposit the remaining one-third in a joint interest-bearing account as a precondition for the grant of stay orders. It is undisputed that the decretal amount in question is substantial. The applicants have neither expressly affirmed nor provided any evidence of their ability to refund the said amount should their appeal not succeed. Conversely, the applicant is a state corporation with perpetual succession. While I acknowledge that, as a state corporation, the applicant possesses legal capacity to sue and be sued independently of the government, I am persuaded that imposing security in the manner suggested by the respondent would severely impair its operational capacity. As of 30th June 2025, the applicant estimates the decretal sum to stand at approximately Kshs. 106,995,995.88.
11. These considerations put together militate against the imposition of such a condition. The interests of justice would be better served by granting the stay without requiring the applicant to furnish security in the terms proposed but at the same time ensuring that the intended appeal is filed expeditiously.



Disposition

12. In light of the foregoing, and in order to balance the competing interests of both parties, I find merit in the application and allow it on the following terms:
- i. An order of stay of execution of the judgment and decree dated 22nd November 2024 in the sum of Kshs. 42,585,500/= is hereby granted, pending the hearing and determination of the intended appeal, on condition that the applicant shall file and serve the Record of Appeal within the next 60 days in default of which these stay orders shall automatically lapse without further recourse to this Court.
 - ii. Each party to bear their own costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF NOVEMBER 2025.

F. MUGAMBI

JUDGE

