



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
CIVIL APPEAL NO E079 OF 2025

JUDAH KIMATHI KIRIMI..... 1ST APPELLANT
DENNIS MLITHIT GICHINI..... 2ND APPELLANT
VERSUS
GODFREY WANG'OMBE GICHANGI.....RESPONDENT

RULING

- [1] The applicant filed a Notice of Motion dated 11th August, 2025 seeking the following orders:
- [2] *Spent.*
- [3] *Spent.*
- [4] *That the honourable court be pleased to issue stay of execution of the Judgment delivered on 29th September, 2022 in Kerugoya CMCC 150 OF 2019 pending the hearing and determination of the Appeal.*
- [5] *That costs of this application be provided for.*
- [6] The application is based on the grounds on the face of the application and the supporting affidavit of the applicant. The applicants case is that Judgment in Kerugoya CMCC 150 OF 2019 was delivered on 29th September, 2022. The Respondent extracted a decree for payment of Kshs. 1,335,387/=. The Respondent has now taken out a Notice to Show Cause for payment of Kshs. 1,335,387/= which comes up for hearing on 14th August 2025. Failure by the applicants to show cause risk being committed to Civil Jail.
- [7] The applicants aver that Invesco Assurance Company Limited being the insurer of the Motor Vehicle Registration Number KCN 868W are the ones who are mandated to settle

any Claims of the insured under the Insurance Contract. On 14th August, 2024, Invesco Assurance Company Limited has been placed under statutory management and a moratorium on the payment of the insurer to the policyholders and all other creditors has been declared for a period of twelve (12) months effective 14th August 2024. The moratorium was further extended for 6 months which period shall lapse on 14th August 2025.

[8] Lastly, the applicants aver that it is in the interest of justice that the stay of execution of the Judgment and orders be issued following the moratorium declared by the Statutory Manager.

[9] The respondent deposed to a Replying Affidavit and averred that the application was filed to stop the hearing of the notice to show cause scheduled for hearing on 14/8/2025. The application is an afterthought since the Invesco Assurance Company Ltd was placed under statutory management on 14/8/2024. That even before Invesco Assurance Company Ltd was placed under statutory management, the appellants had not made any effort to settle the claim yet they were aware of the same all along.

[10] The respondent avers that Invesco Assurance Company Ltd claims with its policy holders and creditors have been forwarded to the Policy Holder Compensation Fund which pays a maximum of kshs 250 000. That even if the stay is granted to await the settlement of claims by the Policy Holder Compensation Fund, an amount of ksh 1,220,000/= will remain unpaid.

[11] Further, the appellants appeal does not touch on the liability or quantum of amount claimed and it only deals with whether Policy Holder Compensation Fund should settle the claim for him. They be ordered to deposit the whole decretal amount and costs in court.

[12] Lastly, the respondent avers that judgment in his case was passed way back on 29/9/2022 and the subject accident happened on 29/6/2019. He sustained serious injuries and he is living with disability.

[13] The applicants deposed to a supplementary affidavit and aver that they with the Insurer over the payment of the decretal amount. The moratorium that was in place has since been extended for another 6 months from 14th August 2025.

[14] Lastly, there is a pending petition for the revival of Invesco Assurance Company Limited which is pending determination.

Applicant submissions

- [15] On substantial loss, the Appellants submit that they stand to suffer substantial loss if the decree is executed by the Respondent since the insurance, Invesco Assurance Insured under the Company Limited, is the one mandated to settle any claims of the insured under the Insurance Contract and the said insurance has been placed under a statutory Management and a moratorium issued to that effect.
- [16] On Unreasonable delay, the Appellants submissions that the ruling was delivered on 25th June 2025 and the Appeal lodged on 9th July, 2025 which is within statutory timeline for lodging an Appeal hence there was no unreasonable delay occasioned.
- [17] In the Replying Affidavit, the Respondent indicates that the matter has taken 6 years but
- [18] the same has been explained by the Applicant since the matter was pending determination of the Stay of Proceedings before the Lower Court citing **James Wangalwa & Another v Agnes Naliaka Cheseto [2012] KEHC 1094 (KLR)**.
- [19] The application herein was filed on the 11th April, 2011 which is barely 12 days from the date when the Applicant's application for stay was dismissed by the lower court, on 31st March 2011. The rest of the time that lapsed between the date of the decree and when the application for stay was dismissed the lower court has been explained by the legal processes that were undertaken then.

Respondent's submissions

- [20] Delay: the respondent submit that the application is brought with inordinate delay. The applicants seek to stay a judgment that was made 3 years ago (on 29/9/2022) and there is no explanation for the delay.
- [21] Merit of the appeal: Secondly, he submits that the order ought not to issue because the appeal herein in not in respect of the judgment but in respect for an application for stay.
- [22] The appellants have never raised an issue with the judgment that was delivered in the lower court on 29/9/2025. There is not appeal pending against the judgment. The appellants appeal is in respect of an application where they are urging that the insurance company that had insured the appellants' vehicle went under statutory management, there

should be no execution until the moratorium is vacated. It is clear from the applicant's document that the moratorium has not been extended and it lapsed on 14/8/2025.

[23] The supplementary affidavit filed shows that the Invesco Assurance Company Ltd has filed an application for revival which will be heard together with the application for liquidation which is pending before the high court Nairobi. The parties in that suit are different from those in that suit and the issues therein have no bearing on the issues in this case. There is no stay or moratorium at the moment in regard to claims of policy holders of Invesco Assurance Company Ltd.

[24] Substantial loss: the respondent submit that the applicants have not demonstrated what substantial loss they are likely to suffer if the stay is denied. The applicants have not appealed the judgment of the lower court. The applicants have not demonstrated that the respondent is not a man of mean and that he will be unable to refund their money should the appeal court rule in their favour. Furthermore, they will be able to recover any money they will have paid from the Invesco Assurance Co. Ltd.

[25] Security & Intervening circumstances: the respondent submit that the decretal amount of Ksh.1,335,387 is not too huge an amount for the appellants to allege that they stand to suffer substantial loss. The applicant has not even given security for costs.

[26] The Court in *Gianfranco Manenthi & Another v Africa Merchant Assurance Company Ltd* [2019] eKLR held that the purpose of the security needed under Order 42 is to guarantee the due performance of such decree or order as may ultimately be binding on the Applicant. It is not to punish the judgment debtor.

Issue

[27] Whether stay of execution pending hearing and determination of the appeal should be granted.

Analysis

[28] Whether the Applicants have satisfied the conditions for stay of execution pending appeal under Order 42 Rule 6 of the Civil Procedure Rules.

[29] Order 42 Rule 6(2) sets out three mandatory requirements:

- i. Substantial loss may result unless stay is granted;**
- ii. The application is made without unreasonable delay;**

iii. Security for due performance of the decree is provided.

Substantial loss

[30] The Applicants argue that substantial loss will arise because the judgment debtor is insured by Invesco Assurance. Further, the insurer is under statutory management and cannot settle claims. Lastly, the Applicants risk committal to civil jail.

[31] The Respondent counters that the Applicants have not shown inability to pay. Further, the decretal amount is not excessive. Lastly, the Applicants have not shown that the Respondent cannot refund the amount.

[32] The Court in **James Wangalwa & Another v Agnes Naliaka Cheseto [2012] KEHC 1094** emphasized that substantial loss is not established merely by stating that execution will issue; rather, the Applicant must demonstrate that execution will create an irreparable situation.

[33] In the present case, the decretal sum is Kshs.1,335,387, a significant amount for ordinary litigants. Additionally, there is credible evidence that Invesco Assurance is under statutory management and that there is uncertainty as to when, or if, settlement may occur. If execution proceeds, the Applicants would personally bear a financial burden for a debt that, contractually, should be borne by their insurer.

[34] While the Respondent has waited since 2019 and suffered injury, the Court must balance both parties' interests.

[35] The Court is satisfied that substantial loss has been demonstrated.

Delay

[36] The judgment was delivered on 29th September, 2022, but the Applicants explain that the delay was due to previous stay proceedings in the lower court. The dismissal of their stay application in June 2025. Lastly, prompt filing of the current application 12 days later, on 11th August, 2025.

[37] In the Replying Affidavit, the Respondent indicates that the matter has taken 6 years but the same has been explained by the Applicant since the matter was pending determination of the Stay of Proceedings before the Lower Court.

[38] See *James Wangalwa & Another v Agnes Naliaka Cheseto, supra*. Considering the procedural history of the matter, the Court finds the delay sufficiently explained.

Security for Costs

- [39] Security is mandatory under Order 42 Rule 6 of the Civil Procedure Rules.
- [40] The Applicants have not offered any security in their application. Where security is not offered, the Court may impose reasonable terms.
- [41] The Court has noted that the Record of Appeal has been filed.

ORDERS

- [42] Accordingly, for the reasons set out above, the application for stay of execution pending appeal is allowed upon terms that:
- [43] The appellant shall **within thirty 30 days** provide security in the nature of a bank guarantee for the payment of the decretal sum costs and interest as may be adjudged against them on appeal.
- [44] The appellants shall file **written submissions** of the appeal within thirty (30) days and the Respondent shall file written submissions in reply within thirty (30) days of service by the appellants.
- [45] **Directions** as to judgment shall be given on **26/1/2026**.
- [46] Costs in the Appeal.

Order accordingly.

DATED AND DELIVERED THIS 28TH DAY OF NOVEMBER 2025.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Mrs. Makworo for the Appellant.
Ms. A Thungu for the Respondent.