

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CIVIL APPEAL NO. E206 OF 2025

MOTOROLOGY LIMITED..... APPELLANT/APPLICANT

VERSUS

CHARLES MUTINDA MUTHUI.....
RESPONDENT

RULING

1.This is a ruling on the Appellant’s Notice of Motion dated 28/08/2025 which seeks the following orders, that;

“a. Spent

b.This Honourable Court be pleased to order for stay of execution of the Interlocutory Judgment entered on the 15th day of November 2023 against the Appellant pending the hearing and determination of the appeal.

c. Spent.

d.This Honourable Court be pleased to order for stay of execution of the Orders made from the Ruling delivered on the 30th day of July 2025 pending the hearing and determination of the appeal.

e. Spent.

f. The costs be provided for.”

2. The Application is supported by the affidavit of Nicholus Ngoli Inyangala, a Sales Manager of the Appellant company, who deposes that the Appellant, through its agent Azan Motors Limited, entered into a hire purchase agreement with one JOHN MUNYUA MBUGUA, a third party, in respect to a vehicle KCX 992Y at a purchase price of Kshs 3, 100,000; that upon

execution of the agreement, the said third party paid a deposit of Kshs. 1,000,000 and took possession of the vehicle. That he was to pay the balance in twenty-three monthly instalments of Kshs. 65,217 which he was still paying when a traffic accident occurred; that according to the agreement the hirer was to be wholly liable in such an eventuality; the only reason the appellant had its name on the log book was to secure its interest in it but it could not be held liable for the accident. That the Respondent has begun to execute it and unless a stay of execution is granted the appellant shall suffer substantial loss; that this appeal is arguable and meritorious and will therefore be rendered nugatory. Further, that the Respondent's ability to refund the decretal sum is unknown and the application has been brought without unreasonable delay.

3.As at the time of writing this ruling the application was not opposed.

4.The application was canvassed by way of written submissions. Relying on the case of **Gateway Insurance Co Ltd v Jamila Suleiman & another [2018] eKLR and the case United Assurance Co. Ltd v Attorney General: SCCA NO.1 of 1998** counsel for the appellant submitted that if the orders sought were not granted then this appeal and application will be rendered moot as the Respondent's intention is to sell the properties of the Appellant who has nothing to do with the case in the court below. Secondly, that

there is no requirement for a company to annex a board resolution or other formal document authorizing the swearing of an affidavit, filing of pleadings or instructing counsel to act on its behalf.

Analysis and determination.

5. I have carefully considered this application and I am satisfied that it meets the test for stay of execution pending appeal. The appellant has demonstrated that it would suffer substantial loss were the stay to be refused and the appeal succeeds. The appellant has exhibited a warrant which demonstrates that the Respondent is intent on executing against it. The Respondent did not defend this application and there is no way of knowing whether he would be in a position to refund the decretal sum in the event the appeal was to succeed. The application has also been brought timeously. The application is therefore allowed and there shall be a stay of execution of the impugned ruling as against the appellant pending hearing and determination of this appeal. The appellant shall deposit in court a sum of Kshs 135,111 within thirty days as security and in default the stay shall lapse.

6. The costs of the application shall abide the appeal.

Orders accordingly.

Ruling signed, dated and delivered virtually on this 27th day of November 2025.

E.N. MAINA
JUDGE

IN PRESENCE OF:

Ms Cherop for Appellant

C/a: Geoffrey

No appearance for the Respondent

ORIGINAL