

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL SUIT NO. 174 OF 2018

DR. SELINA VUKINU
AMBE.....PLAINTIFF/RESPONDENT

VERSUS

CYLLUS GODFREY
ONYANGO.....DEFENDANT/APPLICANT

RULING

Background

1. Pending determination is the Notice of Motion dated 15th October 2025 (the Motion). It was filed by **Cyllus Godfrey Onyango** (the Applicant). It is supported by the grounds found on the face of it and in the Supporting Affidavit of the Applicant. It seeks stay of execution of the judgment delivered in the present suit on 24th May 2023 and the resulting decree. It also seeks stay of the Warrants of Attachment of moveable property and the Proclamation of attachment dated 7th October 2025, pending the hearing and determination of the Reference dated 3rd April 2025.

2. The Application brought under Sections 3 and 3A of the Civil Procedure Act (CPA); the Judicature Act Cap. 8 Laws of Kenya; the High Court (Practice and Procedure Rules, Part I, Rule 3) and Article 40 of the Constitution of Kenya, 2010.
3. The Applicant has advanced grounds in support of the application that his advocates filed an application dated 11th July 2024 at the Court of Appeal seeking extension of time to enable them to file and serve a notice of appeal against the judgment delivered in the present suit on 24th May 2023, which application was dismissed vide a ruling delivered on 28th March 2025. That he is aggrieved by the said ruling and wishes to challenge the same by way of a Reference which he has filed by way of a Letter of Reference dated 3rd April 2025. That the Letter of Reference which raises viable issues of fact and law with high chances of success, is still pending before the Court of Appeal.
4. The Applicant has further stated that **Dr. Selina Vukinu Ambe** (hereafter the Respondent) recently served him with Warrants of Attachment and a Proclamation Notice dated 7th

October 2025 with the intention of executing the judgment. That unless the order for stay is granted, the Respondent will proceed with execution thereby causing the Applicant to suffer serious prejudice, rendering the Letter of Reference nugatory. He has urged that this application be allowed as prayed.

Replying Affidavit

5. The Application is opposed by the Respondent who has sworn a Replying Affidavit on 6th November 2025. The Respondent has deposed, *inter alia*, that the Application is not merited given that the Appellant has not satisfied the conditions pertinent to granting an order for a stay of execution, namely, timeous filing of the application, substantial loss/prejudice to be suffered if a stay is denied, and the provision of security.
6. The Respondent has deposed, further, that execution is a lawful process and that the Application is purely intended frustrate her and to delay the enjoyment of the fruits of her judgment.
7. The Respondent has termed the instant application as an afterthought and an abuse of the court process. That since delivery of the judgment, the Applicant never bothered to seek

a stay of execution until now and that no reasonable explanation has been given to warrant the orders sought. The Respondent has urged the court to dismiss the Motion, with costs.

Submissions

8. Parties made oral arguments in support and opposition, respectively, of the Application. **Ms. Tazita**, argued that the Letter of Reference was heard by a two (2)-Judge Bench at the Court of Appeal on 3rd November 2025 and that the same is pending ruling which is scheduled for 5th December 2025. Counsel has urged the court to preserve the subject matter and maintain the status quo until determination of the Letter of Reference.
9. It was submitted that if the orders sought are not granted and the Respondent is allowed to proceed with execution, the Letter of Reference will be rendered nugatory. That the Respondent does not stand to be prejudiced if the application is allowed. Counsel urged the Court to exercise its discretion

in favour of the Applicant and stated that her client is ready and willing to abide by any conditions that the court may set.

10. In opposing the Application, **Ms. Karue** counsel for the Respondent, submitted that ruling on the Letter of Reference is slated for delivery on 5th December 2025; that two (2) years have lapsed since judgment was entered in the suit and yet the Respondent has not made any efforts to satisfy the decree; that the instant Application was only triggered by the execution process; that no substantial loss has been demonstrated and that the Applicant has not presented proper grounds of appeal.

11. It was submitted, further, that the instant Application is aimed at frustrating the Respondent and that it offends Order 42, Rule 6(2) of the Civil Procedure Rules (CPR) on the conditions for granting a stay of execution. Counsel argued that if at all this court is inclined to find otherwise, then the Applicant ought to be ordered to deposit the decretal amount in a joint interest earning account. Otherwise, the court is urged to dismiss the Application with costs.

12. In her rejoinder, **Ms. Tazita** urged the court to balance the competing interests of the parties by allowing the Applicant to deposit the decretal amount in the manner proposed within 90 days.

Determination

13. I have considered the Application and the grounds in support of it found on the body of the application and in the Supporting Affidavit. I have considered the grounds advanced in opposition of the application and the rival submissions of the parties.

14. This court is clothed with discretionary power to grant an order for a stay of execution of a decree or order pending an appeal. I am alive to the requirement that the discretion of the court must be exercised judicially for ends of justice to be met. In **Butt v Rent Restriction Tribunal [1979] KECA 22 (KLR)**, the Court stated that:

“It is in the discretion of the court to grant or refuse a stay but what has to be judged in every case is whether there are or not particular circumstances in the case to make an order staying execution. It has been said that the court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal, if successful from being nugatory.”

15. The applicable provision for an order of stay of execution is **Order 42, Rule 6** of the **CPR**. It provides that:

(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of 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.

(2) No order for stay of execution shall be made under subrule (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.

16. Applying the above provisions in this matter, this court will consider whether the Applicant has met the threshold as provided.

17. On whether the Application has been brought without unreasonable delay, I have read the court record. I have noted that judgment in the present suit was delivered on 24th May 2023, while the instant application was brought in October 2025. This is over two (2) years later.

18. This issue was picked by the Respondent who argued that there was inordinate delay in filing this application. The Applicant has failed to offer an explanation as to the delay in filing this application. It is my considered view, therefore, that the delay in filing this application is inordinate.

19. On whether the Applicant will suffer substantial loss if the orders sought are not granted, I have read the decision of the Court Appeal in **Kenya Shell Ltd v Kibiru & Another [1986] KLR 410**, where the Court held the view that

substantial loss should be prevented and set out conditions to be considered as follows:

“1.

2. In considering an application for stay, the Court doing so must address its collective mind to the question of whether to refuse it would render the appeal nugatory.

3. In applications for stay, the Court should balance two parallel propositions, first that a litigant, if successful should not be deprived of the fruits of a judgment in his favour without just cause and secondly that execution would render the proposed appeal nugatory.

4. In this case, the refusal of a stay of execution would not render the appeal nugatory, as the case involved a money decree capable of being repaid.”

20. This court must balance the two conflicting positions by both parties: that the Respondent has judgment in her favour and should be allowed to enjoy the fruits of that judgment while on

the other hand, the Applicant has argued that his appeal will be rendered nugatory. The court has taken into consideration the averments by and on behalf of the Applicant on the manner in which he stands to suffer substantial loss, alongside the resisting arguments by the Respondent on the same subject.

21. I have noted that save for arguing that execution is imminent, the Applicant did not bring any credible material to demonstrate the manner in which he stands to suffer substantial loss if an order for stay is denied. It is not enough, in my view, for the Applicant to allege that the Reference will be rendered nugatory unless the order for stay is granted. It is not lost to me that the instant application was brought after the Respondent commenced the execution process. I have not seen any record of any previous attempts by the Applicant at applying for a stay of execution.

22. In the premises, I hold the view that the Applicant has not demonstrated that substantial loss to warrant the granting of an order for stay.

23. Having arrived at the above conclusion, I do not think it is necessary to consider the issue of providing security.

24. Consequently, the Notice of Motion dated 15th October 2025 is hereby dismissed with costs to the Plaintiff/Respondent.

25. Orders shall issue accordingly.

Dated, signed and delivered this 1st December 2025.

**S. N. MUTUKU
JUDGE**

In the presence of:

1. Ms. Tazita for the Applicant

2. Ms. Magogo for Mr. Malenya for the Respondent