

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**COMMERCIAL AND TAX DIVISION**  
**COMM. APPEAL NO. E047 OF 2025**

**BETWEEN**

**EQUITY BANK(KENYA) LIMITED.....**

**.....APPELLANT**

**AND**

**JAMES**

**TINEGA.....RESPONDENT**

**RULING**

**Introduction & Background**

1. The Appellant, through the Notice of Motion dated 6<sup>th</sup> March, 2025 seeks to stay the execution of the subordinate court's judgment of 7<sup>th</sup> February 2025 where it was ordered to refund the Respondent Kshs. 295,096.00/= at an interest rate of 22% p.a with effect from 1<sup>st</sup> May 2017 until full payment. The application is supported by the grounds set out on its face and the supporting affidavit of Appellant's Assistant Manager, Legal Affairs, SAMUEL WAMAITHA, sworn on 6<sup>th</sup> March 2025. It is opposed by the Respondent through his replying affidavit sworn on 10<sup>th</sup> April 2025 and the parties have also supplemented their arguments by filing written submissions

which I have considered and I will be making relevant references to the same in my brief analysis and determination below.

## **Analysis and Determination**

2. From the pleadings and submissions, I note that the singular issue for determination by this Honourable Court is whether the Appellant has established a valid basis for this court to grant an order for stay of execution. The legal framework for granting a stay of execution pending appeal is well settled under **Order 42 Rule 6** of the **Civil Procedure Rules**. It requires that the Appellant must demonstrate that he will suffer substantial loss if the order is not granted, that the application has been made without unreasonable delay; and that he is willing to provide such security as the court may order for the due performance of the decree.
3. Going through the pleadings and submissions, I am inclined to allow the application on condition that the Appellant deposits the decretal sum of Kshs.723,036.63/= as security and I therefore make the following orders:-

**1) There shall be a stay of execution of the judgment and decree in Milimani Chief Magistrates' Court Civil Suit No. E835 of 2022, delivered on 7<sup>th</sup> February 2025, pending the hearing and determination of this appeal.**

**2) The stay order granted herein is conditioned upon the Appellant depositing the entire decretal sum of Kshs. 723,036.63/= into an interest-earning account in the joint names of the Advocates for the parties herein, or in the alternative, into court, within Fourteen (14) days from the date of this ruling.**

**3) The Appellant/Applicant is further directed to expedite the preparation and filing of the Record of Appeal within Ninety (90) days from the date of this ruling.**

**4) In the event of default of either condition (2) or (3) above, the order for stay of execution shall stand automatically vacated without the need for any further application, and the Respondent shall be at liberty to proceed with execution.**

**5) Costs of this application shall be in the cause.**

**DATED SIGNED and DELIVERED virtually at NAIROBI this  
1<sup>ST</sup> DAY of DECEMBER 2025**

.....  
**J.W.W. MONGARE  
JUDGE**

**IN THE PRESENCE OF**

1. Ms. Kipkulei holding for Mbaji for the Appellant/Applicant.
2. Mr. Osoro for the Respondent.
3. Ivan - Court Assistant

ORIGINAL