

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELCC NO. E106 OF 2021

VINCENT PLAINTIFF/RESPONDENT	EKEYA	OMUSE.....	1 ST
ALFRED PLAINTIFF/RESPONDENT	ONYANGO	ATIENO.....	2 ND
ODEDE PLAINTIFF/RESPONDENT	REZIN	OCHIENG.....	3 RD
DENNIS PLAINTIFF/RESPONDENT	OLUOCH	OCHIENG.....	4 TH
JAMES PLAINTIFF/RESPONDENT	OCHIENG	AGENGO.....	5 TH
ONESMUS PLAINTIFF/RESPONDENT	KIMUYU	KIMEU.....	6 TH
MICHAEL PLAINTIFF/RESPONDENT	OMWANDA	AJWANG.....	7 TH
PETER PLAINTIFF/RESPONDENT	WESONGA	OUNA.....	8 TH
KHADIJA PLAINTIFF/RESPONDENT	ALI.....		9 TH
VERSUS			
SAUTI SAVINGS & CREDIT COOPERATIVE SOCIETY DEFENDANT/APPLICANT	LIMITED.....		1 ST
DAVID ELLY DEFENDANT	NDWIGAH.....		2 ND
STELLAMARIS DEFENDANT	MUTHAMA.....		3 RD
FRANCIS DEFENDANT	NGILA.....		4 TH
JOHN DEFENDANT	WAMBUGU.....		5 TH
MUREITHI DEFENDANT	WAMAE.....		6 TH

GERALD DEFENDANT	OMBEWA.....	7 TH
JOHNSON DEFENDANT	MUTUNGI.....	8 TH
WINSTON DEFENDANT	ADELI.....	9 TH
MILTON DEFENDANT	OMONDI.....	10 TH

RULING

1. Before this court is the notice of motion dated 19th August, 2025 filed by the 1st defendant/applicant, and it is expressed to be brought under **Order 42 Rule 6** and **Order 51 Rule 1** of the **Civil Procedure Rules**, and **Sections 1A, 1B** and **3A** of the **Civil Procedure Act**, seeking the following orders:-

1. *Spent.*
2. *Spent.*
3. *Execution of and all proceedings to enforce the ruling and orders of this honourable court given on 12th August, 2025 directing the release of Kshs.11,400,000/- plus interest accrued thereon held in NCBA Bank Account No. 6923890018 in the joint names of Wesonga Wamalwa & Kariuki Associates and Abdulrahman, Saad and Associates Advocates and the release of Kshs.28,500,000/- plus interest accrued therein held in Diamond Trust Bank Limited Account No. 0052100001 in the joint names Wesonga Wamalwa & Kariuki Associates and Abdulrahman, Saad and Associates Advocates*

and Desai, Sarvia and Pallan and Advocates be stayed pending the hearing and determination of the 1st defendant's intended appeal to the Court of Appeal against the said ruling given on 12th August, 2025.

- 4. *Costs of this application be in the cause.***
2. The application is premised on the grounds *inter alia* that being aggrieved by the ruling of this court delivered on 12th August, 2025, the 1st defendant/applicant filed the notice of appeal dated 13th August, 2025 signifying its intention to appeal against the said decision.
 3. The application was supported by the affidavit of the 2nd defendant, the chairperson of the 1st defendant/applicant which is sworn on even date. The 1st defendant/applicant deposed that their intended appeal against the ruling and the judgment of this court have very good chances of success, and that the funds in question are the subject matter of both appeals and once the funds are released, their recovery will be impossible.
 4. The 1st defendant/applicant deposed that the plaintiffs/respondents will not be able to refund the said funds in the likely event that the appeals succeed. Further, that the said amount being a total of Kshs.39,000,000/- is substantial, and it would cause great and

undue prejudice on the 1st defendant/applicant. It was further deposed that they stay of execution is necessary and in the interest of justice to preserve the substratum of the pending appeals.

5. The application was opposed vide the replying affidavit of the 1st plaintiff/respondent sworn on 25th August, 2025 on his behalf and on behalf of the plaintiffs/respondents. The 1st plaintiff/respondent deposed that the 1st defendant/applicant is denying them the fruits of their judgment, yet there is a judgment that was entered in January, 2025. Further, that an application was filed on 19th March, 2025 which was heard and determined and a ruling delivered on 12th August, 2025. The 1st plaintiff/respondent deposed that the instant application is thus *res judicata*.
6. The 1st plaintiff/respondent further deposed that the 1st defendant/applicant has not demonstrated any grounds that merit the orders sought, and neither is there any valid appeal in existence. He deposed that parties entered into a consent on 7th June, 2023 wherein monies were deposited and the 1st defendant/applicant cannot circumvent the said orders by seeking stay of execution. Further, that substantial loss has not been established, and it is imperative that the funds are released forthwith. Further, that the 1st defendant/applicant was issued with

30 days stay on 31st January, 2025 when the judgment was delivered, hence the court is *functus officio* on the issue of stay of execution.

7. The plaintiffs/respondents also filed the notice of preliminary objection dated 19th August, 2025 challenging the instant application on the grounds that **it is incompetent, misconceived, bad in law and does not lie; the application is *res judicata* the application dated 19th March 2025 which was determined by this court by its ruling of 12th August 2025, hence the court is *functus officio*.**
8. The 9th plaintiff/respondent filed his grounds of opposition dated 16th October, 2025 challenging the instant application on the following grounds: -
 - a. ***That the application is misconceived, incompetent, and an abuse of the court process, having been brought after this honourable court has conclusively determined the issues in dispute and is therefore functus officio.***
 - b. ***That this honourable court delivered a final judgment on 31st January, 2025 thereby conclusively determining the rights and obligations of the parties herein.***

- c. That pursuant to the ruling delivered on 12th August 2025, the court made clear and final orders directing the release of the funds held in escrow in satisfaction of the decree arising from the said judgment.**
- d. That the orders sought by the defendants/ applicants effectively invite this honourable court to sit on appeal on its own decision, contrary to established legal principles and the doctrine of *functus officio*.**
- e. That there is no valid stay order from a superior court, and therefore the plaintiffs/ respondents are entitled to enjoy the fruits of their lawful judgment.**
- f. That the defendants/applicants have not demonstrated any new or compelling grounds to justify a further stay of execution, nor have they shown sufficient cause to warrant the court's exercise of discretion in their favour.**
- g. That the continued pendency of this matter and the defendants/ applicants repeated attempts to delay execution are prejudicial, vexatious, and intended solely to defeat or delay justice.**
- h. That litigation must come to an end, and the court should uphold the integrity of its judgment and protect the decree-holder's right to finality.**

i. That the application lacks merit and ought to be dismissed with costs to the plaintiffs/respondents.

- 9.** The application was canvassed through written submissions. The 1st defendant/applicant filed its written submissions dated 10th November, 2025. The plaintiffs/respondents filed their written submissions both dated 18th November, 2025 and 19th November, 2025 respectively.
- 10.** I have considered the application, the replying affidavit, the grounds of opposition and the written submissions filed by the parties herein. The issues for determination is *whether the stay of execution should issue pending the 1st defendant/ applicant's intended appeal.*
- 11.** In an almost similar application dated 19th March, 2025, the 1st defendant/applicant sought for stay of execution of the judgment delivered on 31st January, 2025 and decree pending the hearing and determination of its intended appeal. In a ruling delivered on 12th August, 2025 this court found that no decree had been drawn to invite its intervention to stay execution pending appeal. In doing

so, this court granted a release of the funds held in the joint accounts of the advocates.

12. The 1st defendant/ applicant contends that if the funds are released, and in the likely event that its appeal will succeed, the plaintiffs/respondents will not be able to refund the said funds. The 1st defendant/applicant contended that there is need to preserve the substratum of the intended appeals by granting the orders sought.
13. **Order 42 Rule 6** of the **Civil Procedure Rules** provides as follows:-

***“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except 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 sub rule (1) unless—

- a) the court is satisfied that substantial loss may result to the 1st 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 1st applicant.”**

14. While I reiterate that stay of execution pending appeal is an equitable remedy that is granted to a party who being dissatisfied with the ruling and judgment or order of the court can approach the court for the appropriate relief, it is equally important that for a party seeking this relief, it must demonstrate that it will suffer substantial loss, provide security for the due performance of the said decree and ensure that the application has been made without delay. In this case, the instant application has been made without delay. However, no security for costs has been offered or even mentioned in the application. While the 1st defendant/ applicant claims that the plaintiffs/respondents will not be able to refund the amounts in the event that the appeal succeeds, no evidence has

been provided that the plaintiffs/respondents have no means to pay or refund the said amounts.

- 15.** In my view, the instant application falls short of the requirements provided under **Order 42 Rule 6** of the **Civil Procedure Rules** and more so, this court has previously pronounced itself on the issue of stay. From the foregoing, I find that the notice of motion dated 19th August, 2025 lacks merit, and the same is hereby dismissed with costs to the plaintiffs/respondents.
- Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY
THIS 15TH DAY OF DECEMBER, 2025.**

**HON. MBOGO C.G.
JUDGE
15/12/2025.**

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Wesonga for the 1st to 8th Plaintiffs/Respondents

*Ms. Mturi holding brief for Mr. Mohamed for the 9th
Plaintiff/Respondent*

Mr. Sarvia for the Defendant /Applicant