

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
CIVIL APPEAL NO. E183 OF 2025

**BERNARD
MURIITHI.....APPELLANT/APPLICANT**

VERSUS

**SLM WOODWORKS LIMITED.....
RESPONDENT**

R U L I N G

Brief facts

1. The application dated 6th November 2025 seeks for orders allowing the applicant to pay the security in monthly installments provided that the entire decretal amount is paid into the court before the conclusion of the appeal.
2. The respondent did not file any replying affidavit but orally argued in court opposing the application on grounds that this court has already pronounced itself on the issue of extension of time on the security. Further, that order 42 of the Civil Procedure Rules call for security to be provided by the applicant.

Appellant's /Applicant's Case

3. The applicant states that the stay granted by the court on 24th July 2025 has already lapsed and he is therefore currently exposed to the risk of the respondent attempting to execute the very same judgment he is appealing on.
4. The applicant further states that he paid Kshs. 30,000/- on 6th November 2025 into the court although he is financially constrained. The applicant states that he had shown in previous applications his inability to pay the entire decretal sum in one lumpsum and thus in the interests of justice he ought to be allowed to make payments of the decretal sum into court in monthly instalments.
5. The applicant argues that the respondent shall not suffer substantial loss if the application is allowed and stay is granted. On the contrary, the applicant argues that he shall incur substantial loss if the court fails to exercise its rightful discretion since the respondent will be at liberty to execute the judgment.
6. The applicant undertakes to pay the entire decretal amount into court before the conclusion of the appeal.
7. The applicant filed a Further Affidavit dated 8th November 2025 and urges the court to protect him from execution

as execution before the conclusion of the appeal would render it nugatory.

The Law

Whether the application is merited

8. On perusal of the record, on 24th July 2025, this court granted stay of execution of the judgment dated 3rd July 2025 in Thika SCCC No. E552 of 2024 on condition that the applicant deposit the decretal amount in court within thirty (30) days and in default the orders automatically stood vacated. There was no compliance by the applicant. Instead, the applicant filed two applications dated 21st August 2025 and 18th September 2025 seeking extension of the orders of stay made on 24th July 2025 and the applicant further stated that he was not in a position to deposit the decretal sum in court. In opposition to the said applications, the respondent filed a Replying Affidavit and Notice of Preliminary Objection both dated 29th October 2025. The applicant thereafter filed the instant application seeking to deposit the decretal sum in monthly installments of Kshs. 10,000/= and deposited a sum of Kshs. 30,000/- in court.

9. From the record, it is evident that the orders dated 24th July 2025 automatically vacated and as it stands there are no orders to review in terms of allowing the applicant to make monthly installments on the decretal amount. Notably, the applicant failed to comply with the orders of

security of costs and therefore the interim orders vacated. Therefore, there are no orders for this court to extend or to review.

10. I have further noted the applicant withdrew his applications dated 21st August 2025 and 18th September 2025 on 10th November 2025. The respondent has orally in court requested for costs on the said applications. It is my view that since the respondent participated in the said applications, they are entitled to costs.

11. Accordingly, the application dated 6th November 2025 lacks merit and ought to be dismissed with costs.

12. The respondent is granted costs of this application and the one dated 22/07/2025.

13. It is hereby so ordered.

***RULING DELIVERED VIRTUALLY, DATED AND SIGNED
THIS 4TH DAY OF DECEMBER 2025.***

**F. MUCHEMI
JUDGE**