



REPUBLIC OF KENYA



KENYA LAW
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**Gichira v Kioko & another (Civil Appeal E305 of 2024)
[2025] KEHC 18896 (KLR) (18 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18896 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL APPEAL E305 OF 2024
EN MAINA, J
DECEMBER 18, 2025**

BETWEEN

PETER SOLOMON GICHIRA APPELLANT

AND

DANIEL KONGA KIOKO 1ST RESPONDENT

STEPHEN MUTUA 2ND RESPONDENT

RULING

1. Before me is the Appellant/Applicant's Notice of Motion dated 14th May 2025 by which he seeks a stay of execution of the judgment and decree of the court below pending hearing and determination of the appeal herein.
2. The gist of the application as can be seen in the grounds on the face of the application and as deponed in the affidavit is that the Appellant/Applicant was not the beneficial owner of the vehicle in issue; that he has a meritorious appeal and that execution of the decree will render the appeal futile. In the submissions, learned Counsel stated that the accident motor vehicle belonged to the 2nd Respondent who purchased it under the *sale of Goods Act*; that the sale agreement produced in court was sufficient proof of the sale despite that he did not sign the transfer form and the 2nd Respondent did not have it transferred to his name. He urged this court to grant the stay of execution in the interest of justice. Counsel placed reliance on the following cases: Osumo Apima Nyaundi v Charles Isaboke Onyanchara Kilondori & 3 others [1996] eKLR. Joel Muthuri v Julius Gichuru Guantai [1996] eKLR. Ignatius Makau Mutisya v Reuben Musyoki Muli and Joel Muga Opinja v East Africa see food Ltd [2013] eKLR. Muhambi Koja Said v Mbwana Abdi [2015] eKLR. Jared Magwaro Bundi & Another v Primarosa Flowers limited [2018] eKLR.
3. The application was however vehemently opposed. In a replying affidavit sworn by the 1st Respondent on 27th May 2025, he deposes that he is the decree holder in the case in the court below; that



the Appellant/Applicant has not demonstrated substantial loss and has not shown willingness to comply with the conditions of stay as provided in Order 42 Rule 6 of the Civil Procedure Rules. He deposes that this application is frivolous, unmeritorious and is only intended to delay and frustrate his enjoyment of the fruits of the judgment. He urges that should this court be inclined to grant the stay, then it ought to order the Appellant/Applicant to deposit the entire decretal sum in joint interest earning account so as to forestall any further delaying tactics. He contends that that is the only way to ensure that the appeal shall be prosecuted expeditiously.

4. In their submissions, Counsel for the Respondent reiterated that the Appellant/Applicant had not satisfied the legal threshold for grant of stay of execution pending appeal as he has not demonstrated that he is likely to suffer substantial loss, and has not shown any commitment to furnish security. Counsel urged this court to either dismiss the application or to grant the stay on condition that the Appellant should deposit the entire decretal sum within 30 days. Counsel drew from the following cases:-Carter & Sons Limited v Deposit Protection Fund Board & 2 others Civil Appeal No. 291 of 1997.Arun C. Sharma v Ashana Raikundalia t/a Raikundalia & Co. Advocates sand 2 others [2014] eKLR.
5. The issue for determination is whether the Appellant/Applicant has met the threshold for grant of an order for stay of execution pending appeal.
6. The power of this court to stay of execution of a decree pending appeal is vested by Order 42 Rule 6 of the Civil Procedure Rules which states:-

- “(1) 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 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.
- (3) Notwithstanding anything contained in subrule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.
- (4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.
- (5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.



(6) Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”

7. It is therefore trite that for an applicant to succeed they must satisfy the court firstly, that substantial loss may result to them unless the order is made; secondly, that the application has been made without unreasonable delay and thirdly they are willing to deposit such security as may be ordered by the court. There is a long line of cases on this issue some of which have been ably cited by Counsel for the Respondent.
8. In this case the Appellant/Applicant has completely and deliberately avoided the three conditions instead choosing to argue his appeal. He has not cited any of those grounds in his application and has not mentioned them at all in his affidavit or in the submissions of his Counsel. Needless to say none of the conditions has been demonstrated and applying the provisions of Order 42 rule 6(2) of the Civil Procedure Rules the Appellant/Applicant has not satisfied this court that substantial loss may result to him unless the order is made. His application is therefore devoid of merit.
9. Be that as it may, the Respondent has been magnanimous enough to propose to this court that it can nevertheless grant the say on condition that he deposits the decretal sum in a joint interest earning account. Given that his application was drafted, though very poorly, by an advocate so as not to visit the mistake of Counsel upon him, I shall exercise my discretion in his favour and order a stay of execution provided that he deposits the entire decretal sum either in court or in an interest earning account in the joint names of his Advocate and that of the Respondent within 30 days.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 18TH DAY OF DECEMBER 2025.

E. N. MAINA

JUDGE

In The Presence Of:

Mr. Tamata for the Appellant

Mr. Akenga for Kamende for Respondents

Geoffrey – Court Assistant/Interpreter

