



REPUBLIC OF KENYA



**Kumar v Prime Bank Limited (Civil Appeal E269 of 2025)
[2025] KEHC 18724 (KLR) (18 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18724 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E269 OF 2025
RN NYAKUNDI, J
DECEMBER 18, 2025**

BETWEEN

SUDHIR KUMAR APPELLANT

AND

PRIME BANK LIMITED RESPONDENT

RULING

1. Before the Court is Notice of Motion under Certificate of Urgency dated 5th November 2025. The same is brought Under Orders 22 Rules 22 & 25 42 Rule 6 of the Civil Procedure Rules and Section 3A of The *Civil Procedure Act* Cap 21 and all the Enabling Provisions of the Law and is seeking for the following orders:
 - i. That this application is certified as urgent and service of the same be dispensed with in the first instance.
 - ii. That there be temporary stay of execution of the ruling in Eldoret MCCC/ E549/2025 delivered on 29/10/2025 by Hon. D. S. Sifuma (SRM) pending hearing and determination of this application inter-parties.
 - iii. That there be temporary stay of execution of the ruling in Eldoret MCCC/ E549/2025 delivered on 29/10/2025 by Hon. D.S. Sifuma (SRM) pending hearing and determination, pending hearing and determination of the appeal.
 - iv. That the Respondent and or their authorized agents be restrained by way of an injunction from offering for sale, selling by Public Auction or private treaty that parcel of land known as Pioneer/Langas Block 1(Malel)/405 (A1) pending the hearing and determination of this application interparties and thereafter the appeal herein.
 - v. That necessary directions be given.



2. The application is grounded on the grounds that:-
 - a. The Applicant being aggrieved by the judgment of Hon. D. S. Sifuma (SRM) has preferred an appeal against the whole ruling.
 - b. The Applicant stands to suffer substantially during the pendency of the appeal as the Respondent has proceeded to advertise the suit property for sale and the same is scheduled on 27th November, 2025 by way of public auction.
 - c. The appeal filed herein by the Appellant has high chances of success hence the need for the order of stay of execution.
 - d. The Respondent will not be prejudiced in any way if the orders herein are granted.
 - e. This application has been made without undue delay.
3. Which application is supported by the annexed affidavit of Sudhir Kumar who stated as follows:
 - a. That I am the Appellant/Applicant herein hence competent to swear and depone to this affidavit.
 - b. That the Honorable Court delivered virtual ruling on 29th October, 2025 dismissing my application dated 9th May, 2025 seeking for injunctive orders against the Respondent to restrain them from offering for sale my parcel of land known as Pioneer/Langas Block 1 (Malel)/405 (A1) pending hearing and determination of the main suit.
 - c. That I was not satisfied with the said ruling and appealed against it and preferred this appeal.
 - d. That as a consequence of the said ruling, the Respondent has moved to advertise my land parcel No. Pioneer/Langas Block 1 (Malel)/405 (A1) for sale by public auction on 27th November, 2025.
 - e. That I am apprehensive that my suit parcel of land is at risk of being sold by public auction and thus the need for intervention of this Honourable court.
 - f. That I thus pray for orders of stay of execution of the ruling delivered on 29th October, 2025 by Honourable D.S.Sifuma(SRM).
 - g. That I further pray for injunctive orders against the Respondent restraining them from offering for sale, selling by either public or private treaty that parcel known as Pioneer/Langas Block 1 (Malel)/405(A1).
 - h. That my aforementioned appeal has very high chances of success and in the event the Respondent proceeds to sale the suit parcel of land as a result of the lower court ruling will render the same nugatory.
 - i. That is therefore in the interest of justice and fairness that and injunction and a stay of execution pending appeal be granted to await the outcome of my appeal.
 - j. That I swear this affidavit in support of the application for stay of execution which has been made in utmost good faith and within reasonable time.
 - k. That what is deposed herein is true to the best of my knowledge, information and belief save for information sources of which are herein disclosed.



Decision

4. The law on stay of execution pending an appeal is now well settled as fashioned under Order 42 Rule 6 (1), 2 & 3 of the Civil Procedure Rules which provides as follows:
 1. “No appeal or second appeal shall operate as a stay of execution of 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 may 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.
5. The Court in *Deposit Protection Fund Board suing as the Liquidator of Reliance Bank Limited (In Liquidation) v Panachand Jivraj Shah and Others, Nairobi (Milimani) High Court Civil Case Number 1529 of 2001* remarked as follows:
 - a. The conditions for grant of a stay of execution of a decree by the High Court are set out in Order 41 rule 4(1) and (2) and if the Court appealed from does not grant a stay of execution of the decree or order the applicant may still seek the same order in the Court of Appeal.
 - b. The conditions for grant of stay of execution pending appeal are:
 - i. That there is a sufficient cause for the grant of the order for stay of execution of the decree or order;
 - ii. That the substantial loss may result to the applicant unless the order is made
 - iii. That the application has been made without unreasonable delay;
 - iv. That security as this court orders for the due performance of such decree or order that is binding on the applicant has been given by the applicant.
 - c. In the context of Rule 5, 14 days’ delay is not reasonable.
 - d. Sufficient cause is a combination of facts which go to show that the order shall not be executed until the combination of facts or situation changes or is materially altered.
6. What I gather from the caselaw and jurisprudential developed over time, a set of guidelines and question for a Judge to answer involve inter alia:



- a. Prospect of Success: Has the applicant satisfied the court that their appeal has a good prospect of success? If no, a stay should not be granted.
 - b. Ruination/Stifled Appeal: If the appeal has a good prospect of success, has the applicant satisfied the court they would be ruined or their appeal stifled if forced to pay immediately? If yes, a stay can be granted (subject to other conditions).
 - c. Inability to Repay: Has the applicant satisfied the court that there is no reasonable probability the judgment creditor will be able to repay the monies if the appeal succeeds? If yes, a stay should be granted (subject to other conditions).
 - d. Security: The court may require the applicant to provide security (e.g., a personal guarantee or undertaking not to alienate property)
7. Having considered the application and the evidence of the parties and the related instruments like the ruling of the trial court the issue in contention is crystal clear from the affidavit of the applicant. In the event the stay of execution is declined the suit parcel of land might be at risk of being sold by Public Auction thus the need for intervention by this Court. For context purposes, it is to be recalled that the present interlocutory appeal is against the orders issued in Eldoret MCC E549 of 2025 by Hon. D. S. Sifuma – SRM. It is acknowledged that on appeal the burden will be on the applicant to persuade this court that the trial court was wrong in lifting the temporary stay of execution.
8. It follows therefore, the application dated 5th November 2025 be and is hereby granted with costs which shall abide the outcome of the intended appeal.

DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 18TH DAY OF DECEMBER 2025

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R. NYAKUNDI
JUDGE

