

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
(CIVIL DIVISION)
HCCA NO. E323 OF 2025**

WILLY GITHAE MURITHIAPPELLANT
VERSUS
NEW PROMISE CONTRACTORS CO. LTD
.....RESPONDENT

RULING

1. The Hon. Gathogo Sogomo (PM) delivered a ruling on 31st October 2025. Being aggrieved, the appellant filed an appeal from the decision. The appeal seeks to set aside, vacate, or quash the impugned decision, to have the application dated 29th August 2025 allowed in its entirety, and to have the costs of the appeal and the application dated 29th August 2023 paid by the firm of Mung'oma Mung'oma and Co., advocates.
2. Through the application dated 6th October 2025, the appellant/applicant sought a stay of execution of the proclamation notice dated 28th August 2025, the warrants of sale of the property proclaimed in execution of the decree issued on 28th August 2025, and all subsequent orders emanating from the judgment delivered on 17th January 2025 in Mombasa MCCC No E 406 of 2024, and sought costs to be provided for.
3. The application is opposed. Mr Peter Mung'oma deposed to an affidavit on 12th October 2025, in which he denied that the application had merit. He accused the applicant of not wanting to pay costs. He

attached screenshots of discussions between himself and one Edwin Ambusu, in which it was stated in part that, “I can assure you one thing, you will not be paid even a shilling. Free advice, take it, leave.”

4. I have considered the application, the response thereto, and the applicable law. Order 42 Rule 6 of the Civil Procedure Rules provides that the court may stay execution of the ruling in certain instances where an appellant/applicant may suffer substantial loss, the application has been filed without undue delay, and security for the due performance of the decree has been given.
5. All three ingredients /conditions must be present. In this case, it hasn't been shown what substantial loss the applicant will suffer unless the application is allowed. It hasn't been alleged that Mung'oma Mung'oma and Co. Advocates will be unable to repay the alleged fees if the execution process isn't stopped, nor has any security for the due performance of the decree been offered. In the circumstances, I am unable to agree that the application has merit. The same is dismissed with costs.
6. Orders accordingly.

Dated and signed at Mombasa, this 16th day of December 2025.

Delivered virtually through **Microsoft TEAMS.**

Gregory Mutai

JUDGE

In the presence of: -

Ms Wangeci, holding brief for Mr Mung'oma, for the Respondent;

Ms Wangusi, holding brief for Mr Shago, for the Appellant; and

Zachary – Court Assistant.

Original