

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

MISC E308 OF 2025

CHARLES ONYANCHA.....CLAIMANT

=VERSUS=

CHARLES MOGAKA.....RESPONDENT

RULING

- 1.** Before this court is a notice of motion seeking the following orders:-
 - a) This matter be certified as urgent and be heard on an ex- Parte basis at first instance and prayer No 2 herein be considered.
 - b) That pending the hearing and determination of this application this Honourable court do issue an order of stay of execution of the judgment delivered in Eldoret Small claim court case No E046 of 2024 on an unknown date that dated 13th June 2025 pending the hearing and determination of this application
 - c) That pending the hearing and determination of this application, this Honourable court do issue an order of stay of execution of the judgement delivered in Eldoret Small Claim Court No E046 of 2024 on an unknown date but dated 13th June 2025 pending the hearing and determination of the applications intended appeal
 - d) That the intended Appellant herein who is the Applicant herein be granted leave to lodge an appeal (in terms of the draft memorandum of Appeal annexed herein with) within fourteen (14) days of the granting of the sought for leave to appeal against the judgment delivered against the Applicant on an unknown date but date 13th June 2015 in Eldoret SCCOM. NO E046 of 2024.
 - e) That the costs of this application be costs in the cause.

WHICH APPLICATION is based on the following salient ground

- a) The judgement in SCCOM NO E046 of 2024 was scheduled to be delivered on 6th June 2025.
- b) However 6th June 2025 turned out to be a public day and the court system reflected that judgement would be delivered on 13th June 2025
- c) On 13th June 2025 the matter was cause-listed as No 24 (the first under judgment) and on this date it was indicated that the judgement would be uploaded onto the CTS subsequently
- d) Subsequently and later on 13th June 2025 the outcome of the judgment was in capital letters and on the CTS uploaded and stated to be SUIT IS DIMSISSED THERE SHALL BE NO ORERES AS TO COSTS, Essentially the claim came to an end
- e) That on 4th August 2025 the Respondent herein was shocked to be served with a Notice to show cause issued in SUCC NO E046/2024 herein on 31st July 2025 and from this notice there apparently was a judgement in place against the Respondent

DECISION

1. This is an application for stay of execution arising out of the intended appeal against the judgement in the referenced case file No SCC NO E046/2024. The review of the affidavit evidence demonstrates there are issues to be canvassed before an appeals court by an Applicant.
2. The law which guides courts to exercise discretion is to be found in Order 42 Rule 6 of the Civil Procedure Rules which clearly shows that an appeals court has jurisdiction to grant stay in the event the primary court rejects such an application.
3. The court in Stephen **Wanjohi vs Central Glass Industries Ltd Nairobi High Court civil case number 6726 of 1991 (Hayanga J on 3 March 1995** made the following observations:

- (a) For the court to order a stay of execution there must be (i) sufficient course (ii) substantial loss (iii) no unreasonable delay and (iv) security*
- (b) The grant of stay is discretionary and the High Court is also a court of equity*
- (c) It is not just to deny a successful party the benefit of judgment because he is poor*
- (d) The court does not make a practice of depriving a successful litigant of fruit of his litigation and locking up funds to which prima facie he is entitled pending appeal*
- (e) Financial ability of a decree holder solely is not a reason for allowing stay, it is enough that the decree holder is not a dishonorable miscreant without any form of income.*
- (f) 26 days after judgement is not an inordinate delay for purposes of stay pending appeal.*

4. Similarly in the case of **Director of Pensions r Abdul Majid Cockar, National Civil Application Number 66 of 1999** the court held that: *In an application for stay pending appeal it must be shown both that the appeal is arguable and that if successful it will be rendered nugatory unless there is a stay of execution.*
5. It is trite law that under Order 42 Rule 6 (1) of the Civil Procedure Rules besides the other conditions set out, the intended Appellant must show firstly that his appeal or intended appeal is arguable and secondly that unless is granted the orders sought, he or she will suffer irreparable harm not compensable with an award of damages or that the intended appeal will be rendered nugatory.
6. In the intended application, the intended Applicant has laid a foundation in the Memorandum of Appeal the grounds upon which he is aggrieved with the ruling of the learned adjudicator in SCC No E46 of 2024. The historical facts can be better appreciated at the time when

the intended Appellant files the record of appeal. What is of fundamental importance now is whether the intended Appellant has made the criteria to be granted the orders on stay of execution prescribed as being committal to Civil Jail from a decree which is supposed to a subject of scrutiny by the appellant court.

7. What the case law demonstrates is that a successive litigant is generally entitled to the fruits of their judgment and stay of execution should not be granted lightly unless special circumstances of the case demands. The jurisdiction clothed with the courts is that the discretion must be judiciously exercised balancing the competing rights of the parties to justice. In this matter, on the face of it, I hold that the grounds of the intended appeal raise substantial points of law and I lean towards granting a stay of execution pending the hearing and determination of the appeal itself. The costs of this application shall abide the outcome of the appeal.

**GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT PUBLISHED
VIA CTS AND RESPECTIVE EMAILS ON THIS 18TH DAY OF DECEMBER,
2025**

.....

R. NYAKUNDI

JUDGE

