



REPUBLIC OF KENYA

CIVIL APPEAL NO E061 OF 2025

LEONARD MURAGE THERI.....1ST APPELLANT/APPLICANT

MARY NYAWIRA MURAGE.....2ND APPELLANT/APPLICANT

VERSUS

JESCA MINAYO AVULAVA.....1ST RESPONDENT

ISSAC INDULAJI MUGASIA.....2ND RESPONDENT

RULING

[1] The applicant filed a Notice of Motion dated 10th September, 2025 seeking the following orders:

1. Spent.
2. Spent.
3. There be a stay of execution of the decree emanating from the judgement delivered on Baricho MCCC No. E101 of 2023 pending the hearing and determination of the Appeal.
4. Costs of this application be in the cause.

[2] The application is based on the grounds on the face of the application and the supporting affidavit of the applicant setting out the applicant's case is that on 25th April, 2025, the Chief Magistrates Court delivered a Judgment in Baricho MCCC No. E101 of 2023, where the Court awarded the Plaintiff K.Shs. 1,605,550/=. The Applicants face an imminent and real danger of execution by the Respondents to satisfy the decree emanating from the above judgement.

[3] The applicants aver that they stand to suffer substantial loss if the application herein is not allowed as the Respondents will proceed with the process of execution. The Appellants have lodged an appeal in this Honourable Court as the Judgment of the Honourable Magistrate is not supported by evidence that was tendered in court by the parties.

- [4] Lastly, the applicant's appeal has a high probability of success and it will be rendered nugatory if this application is not allowed.
- [5] The respondent deposed to a Replying Affidavit that the Appellants are not being honest by seeking stay of the entire decretal amount since liability is not contested as the same was agreed upon by consent. That in the interest of justice and in view of the fact that liability is not contested she proposes on a without prejudice basis that the Appellants be ordered to pay half of the decretal amount being the sum of Kshs. 802,775 and the balance be deposited in a joint account.
- [6] Lastly, the respondent avers that the prayers sought by the Appellants are not merited and she believes that the Appellants are using this as a delay tactic in making sure that she does not get to enjoy the fruits of our judgment which is unfair and unjust.

Applicant submissions

- [7] The Applicants faces imminent risk of execution following the judgment of the lower court. If stay is not granted, the applicants may be compelled to satisfy a decree it believes is unsupported by the evidence and unjustified under the relevant legal framework, exposing it to substantial loss. The Applicants are willing to comply with any reasonable terms the Court may impose, including the provision of security.

Respondent submissions

- [8] The respondents submit that the applicants have not demonstrate the alleged particulars of substantial loss but only alleges.
- [9] The Respondents humbly submits that the Applicants have not met the requisite conditions for granting of stay orders and prays that the application be dismissed with costs to the Respondents. The said application is not merited and the same is being used as a delay tactic to deny the Respondents from enjoying the fruits of their judgement.

Issue

- [10] Whether stay of execution pending hearing and determination of appeal should be granted.

Analysis

[11] The principles governing stay of execution pending appeal are found in Order 42 Rule 6(2) of the Civil Procedure Rules, namely:

- i. **Substantial loss may result unless the order is made;**
- ii. **The application is brought without unreasonable delay; and**
- iii. **The applicant must provide security for the due performance of the decree.**

Substantial loss

[12] The Applicants contend that they face imminent execution to satisfy the decretal sum of Kshs. 1,605,550/=, and that payment of this sum before their appeal is heard will occasion them substantial loss since the judgment is alleged to be unsupported by evidence.

[13] The Respondents argue that substantial loss has not been demonstrated and emphasize that the Applicants are merely seeking to delay the enjoyment of the fruits of judgment. They also note that liability was agreed by consent at the trial court and thus is uncontested.

[14] Substantial loss does not refer to any ordinary loss, but to a loss that is real, irreparable or one that renders the appeal nugatory if execution proceeds before hearing. The case of **Kenya Shell Ltd v Benjamin Karuga Kibiru [1986] eKLR;**

[15] The decretal sum herein is not insignificant. The Respondents have not demonstrated their financial ability to refund the amount should the appeal succeed.

[16] On this basis, the Court is satisfied that substantial loss has been shown.

Delay

[17] Judgment was delivered on 25th April 2025, and the present application was filed on 10th September 2025. Considering the need to obtain proceedings, lodge an appeal, and instruct counsel, the Court does not consider the delay unreasonable or inordinate.

Security

[18] The Applicants state that they are willing to offer any security the Court may determine. The Respondents urge that at least half of the decretal amount be paid out and the remainder deposited in a joint interest-earning account.

[19] Security is a mandatory requirement under Order 42 Rule 6(2)(b) of the Civil procedure Rules. The Court must balance the right of the successful litigant to enjoy the fruits of judgment with the right of the appellant to have their appeal heard without being rendered nugatory so that the appeal is not defeated while safeguarding the Respondents' interests.

ORDER

[20] Accordingly, for the reasons set out above, the court finds merit in the application which is allowed upon terms that:

1. The Applicant shall deposit the decretal sum into an interest earning account in the names of the Counsel for the parties within thirty days.
2. The Record of Appeal shall be filed within sixty (60) days.

[21] Costs in the Cause.

Order accordingly.

DATED AND DELIVERED THIS 11TH DAY OF DECEMBER 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Ontita for the Appellant.

Ms. Ndwiga for the Respondent.