



REPUBLIC OF KENYA



**KENYA LAW**  
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**Etyang & another v Gachuru (Civil Appeal E267 of 2025)  
[2026] KEHC 3 (KLR) (7 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 3 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CIVIL APPEAL E267 OF 2025  
RN NYAKUNDI, J  
JANUARY 7, 2026**

**BETWEEN**

**JAMES ROBERT ETYANG ..... 1<sup>ST</sup> APPELLANT**

**DINNAH MUYOKA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**ISAAC NGUGI GACHURU ..... RESPONDENT**

**RULING**

1. Before this Court is an Application dated 31<sup>st</sup> October 2025 brought under Order 42 Rules 6 of the Civil Procedure Rules, 2010 and Section 3A of the *Civil Procedure Act*, Cap. 21 together with all other enabling provisions of the law. The Applicants moved this Court seeking the following reliefs;
  - a. Spent
  - b. Spent
  - c. That there be a stay of execution of the judgment in Eldoret Chief Magistrate Civil Suit No. 579 of 2019 – Isaac Ngugi Gachuru v James Robert Etyang & Another pending the hearing and determination of the appeal herein.
  - d. That the costs of this application be provided for.
2. The Application is made on the following grounds;
  - a. That substantial loss will ensue.
  - b. That the application has been made without undue delay.
  - c. That sufficient cause exists to warrant the grant of a stay.



- d. That the appellants are willing to provide such security as will be ultimately binding for the due performance of the decree.
3. The Application is supported by an Affidavit of James Robert Etyang stating as follows;
- i. That I am the 1st appellant herein hence competent to swear this affidavit and do also swear on behalf of the 2nd appellant with her authority.
  - ii. That the appellants were the defendants in Eldoret Chief Magistrate Civil Suit No. 579 of 2019 – Isaac Ngugi Gachuru v James Robert Etyang & Another. Annexed hereto is the plaint, defence and list of documents by the parties marked as 'A', 'B', 'C' and 'D' respectively.
  - iii. That the matter was heard and judgment delivered on the 1st October, 2025 in which the court entered judgment against the appellants in favour of the respondent as follows;
    - a. Kshs. 1,867,000.
    - b. Interest at court rates on the sum in (a) above from the date of the judgment until payment in full.
    - c. In keeping with clause 13 of the memorandum of understanding and based on the nature of relationship between the parties herein, execution of the judgment is suspended for a period of one month in order to give the defendants a grace period of one month within which to pay the above amount, together with interest thereon as ordered above to the plaintiff, failing which the plaintiff will be at liberty to execute for the amount and interest using the various execution modes at his disposal including but not limited to implementing clause 13 of the memorandum of understanding with regard to dealing with the property E. BUKUSU/S.NALONDO/2727 of course subject to valuation by all the parties herein.
    - d. The plaintiff shall have costs of the suit. Annexed hereto is the ruling marked as 'E'.
  - iv. That being aggrieved by the judgment of the court the appellants have proffered this appeal based on the grounds:
    - a. The Learned Magistrate erred in law and fact in failing to find that the court was bereft of jurisdiction to deal with a memorandum of understanding as it was not a legally enforceable instrument under the law.
    - b. The Learned Magistrate erred in law and fact in failing to find that he had no jurisdiction to deal with a memorandum of understanding as it lacked the contractual element of intention to create legal relations.
    - c. The Learned Magistrate erred in law and fact in granting relief not sought by granting the respondent liberty to deal with the land parcel known as E. BUKUSU/S.NALONDO/2727.
    - d. The Learned Magistrate erred in law and fact in failing to find that the memorandum of understanding between the appellants and the respondent was entered by the appellants under duress and coercion.
    - e. The Learned Magistrate erred in law and fact in failing to find that the appellants had demonstrated coercion, fraud and undue influence was used to procure the memorandum of understanding between the appellants and the respondent.



- f. The Learned Magistrate erred in law and fact in finding that the plaintiff had proved his case on a balance of probabilities.
  - g. The Learned Magistrate erred in law and fact in misapplying and misinterpreting the law relating to contracts entered into through coercion, fraud and undue influence hence arriving at a wrong decision.
  - h. The Learned Magistrate erred in law and fact in considering issues that were neither raised, pleaded nor submitted upon by the respondent while making his decision. i) The Learned Magistrate erred in law and fact by failing to find that the respondent's evidence was full of inconsistencies and falsehoods thus unreliable.
    - i. The Learned Magistrate erred in law and fact in failing to correctly evaluate and analyze the weighty evidence tendered by the appellants.
  - j. The Learned Magistrate erred in law and fact in predisposing his mind to a position favourable to the respondent against the appellant thus being biased and thereby arrived at a wrong decision.
  - v. That the grounds of appeal as adumbrated constitute sufficient cause to warrant the grant of a stay of execution.
  - vi. That substantial loss will occur as the monetary means of the respondent are unknown in the event the decretal sum is paid to him and the appeal succeeds, the prospect of recovery may be remote.
  - vii. That substantial loss will occur as the court in its judgment in relief (c) it has granted the respondent liberty to deal with the land parcel known as E. BUKUSU/S.NALONDO/2727 in execution of the judgment and which if done will have trifling effects as the land will no longer be available in the event the appeal succeeds.
  - viii. That the appellants are willing to tender the land parcel known as E. BUKUSU/S.NALONDO/2727 as security for the due performance of the decree of which the respondent already has the title to it and its control which constitutes sufficient security for the due performance of the impugned judgment.
  - ix. That the application has been made without undue delay.
  - x. That I do make this oath conscientiously believing the afore-deponed particulars to be true to the best of my knowledge and belief.
4. By the time the last status conference was held on 13<sup>th</sup> November 2025 there was no response from the Respondent as evidenced by the Affidavit dated 6<sup>th</sup> November 2025. This Application therefore is being discussed as an undefended suit or claim for that matter.

### **Resolution**

5. On matters of stay of execution or proceedings pending an appeal the governing provisions remain to be Order 42 Rule 6(2) of the Civil Procedure Rules which briefly provides as follows;
- That there must be;
- a. Sufficient cause
  - b. Substantial cause



- c. No unreasonable delay and
  - d. Security
6. In the case of Stephen Wanjohi vs Central Glass Industries Ltd, Nairobi High Court Civil Case No. 6726 of 1991 (unreported) the court remarked that;
- 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 judgement because he is poor.
  - d. The Court does not make a practice of depriving a successful litigant of the fruits 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.
7. It is trite law that for an Application under Order 42 Rule 6(2) of the Civil Procedure Rules for a litigant intending to pursue an appeal he/she must satisfy the court on two well settled principles in the various case law decided by the High Court and the Court of Appeal, in addition to the grounds in the Rules which guides the discretion of the court. First his/her intended appeal is arguable or put in another way that it is not frivolous. Second that the success of the intended appeal will be rendered nugatory unless the court grants a freezing order of stay of execution or as the case may be.
8. I am also persuaded by the principles in the case of Haimen Zhongnan Investment Development (International) Co. Ltd vs Little Bay which provides a further comprehensive summary of the governing principles on stay of execution pending an appeal include;
- a. The court considers all circumstances.
  - b. A stay is the exception, not the general rule.
  - c. The applicant must provide cogent evidence that the appeal will be stifled or "rendered nugatory" unless a stay is granted.
  - d. The court applies a "balance of harm" test, weighing prejudice to both parties.
  - e. The prospect of success on appeal is considered only where "strong grounds" or a strong likelihood of success is shown.
9. I have reviewed the Affidavit evidence by the Applicant and the decisions by the various courts to grant a stay of execution pending an appeal is a discretionary relief. I am of the considered view that there is merit to this undefended Notice of Motion to grant stay of execution of the judgement of the trial court pending the hearing of the substantive appeal. Therefore, a pre-trial conference shall be held on 17/2/2026 to lay down the case management protocols. With this in mind the Appellant is under a duty to file the record of appeal to jump start the appeal process.
10. It is so ordered.

**GIVEN UNDER MY HAND AND THE SEAL OF THIS 7<sup>TH</sup> DAY OF JANUARY 2026**

.....  
**R. NYAKUNDI**  
**JUDGE**

