

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL CASE NO. E279 OF 2025

KENYA POWER & LIGHTING CO. LTD.....
APPELLANT

VERSUS

JOHN ODHIAMBO AUMO.....1ST
RESPONDENT

**SHELMITH WANJIRU MUINAMIA (Suing as the legal representative
of the late Shelton Ochieng Odhiambo)..... 2ND**
RESPONDENT

Coram: Before Hon. R. Nyakundi
M/s Nyamurongi & CO. Advocates
M/s Julie Atieno Advocates

RULING

1. Before this Court is a Notice of Motion dated 10th day of November 2025 brought under Sections, 1A, 1B, 3A of the Civil Procedure Act – Cap 21 of the Laws of Kenya, Order 42 Rule 6 of the Civil Procedure Rules, 2010 and Article 159 of the Constitution of the Republic of Kenya, 2010. The Applicant moved this Court seeking the following orders:
 - a. *Spent*
 - b. *Spent*
 - c. Pending inter partes hearing and determination of Eldoret HCCA No. E279 of 2025 there be and is hereby issued an order of stay of execution of the judgement of this honourable court.
 - d. Such other or further order be issued as is expedient in the circumstances.
 - e. Costs of this application do abide the outcome of Eldoret HCCA No. E279 of 2025.
2. The Application is made on the following Grounds;

- i. Judgement was entered in favour of the plaintiffs/respondents on 14/10/2025.
- ii. By the said judgment this honourable court awarded the plaintiffs an aggregate sum of Kshs. 3,999,072.00.
- iii. The applicant being aggrieved with the whole of the judgement of this honourable court has preferred an appeal against the same (on liability and quantum of damages awarded), being Eldoret HCCA No. E279 of 2025.
- iv. The applicant will suffer substantial loss in the event that execution proceedings take place to enforce the judgment of this honourable court. This is why:-
 - The sum paid will most likely be incapable of restitution. The respondents' whereabouts and financial ability to retribute the said sum is unknown. The applicant is apprehensive that any amount it pays will not be recovered.
 - The appeal filed will be rendered nugatory/academic.
 - In the likely event of the appeal succeeding the applicant will lose the entire judgement sum inclusive of costs -yet to be assessed as of the date hereof.
- v. The appeal filed by the applicant will be rendered nugatory should execution proceedings take place as the respondents have no known means of financial ability which will ensure refund of any monies paid out, in the likely event that the appeal is ultimately successful. In any event, any monies payable will be paid to the estate of the deceased whose value is unknown.
- vi. The applicant offers a bank guarantee covering the entire judgement award as security to guarantee performance of the eventual decree of this honourable court. The bank guarantee is the least disadvantageous form of security to the applicant.
- vii. This application has been filed with due promptitude as the subject appeal was lodged on 8th November, 2025.

- viii. It is in the wider interests of justice that the appellant's right of appeal be preserved/given effect.
 - ix. The respondents shall not be prejudiced in the event that the instant application is upheld as the judgement award will be secured by the Bank Guarantee which the applicant proposes to issue as security.
 - x. The applicant's appeal raises substantial issues of law and fact, is arguable and has high chances of success.
 - xi. Preserving the substance of litigation will enable the court to substantively deal with the application at inter partes stage. The court will be in a position to render justice to the parties on equal footing without granting undue advantages to either party.
 - xii. Execution will in all reasonableness be undertaken should this application be processed in the ordinary course of events -which underscores the need to entertain this application on priority basis.
 - xiii. This honourable court has inherent jurisdiction to issue such orders as will secure and/or further justice to the parties.
 - xiv. The nature of this application is such that the same ought to be dealt with on priority basis.
3. In support of the application is the supporting affidavit of Michael Ochieng who deponed as follows:
- i. I am employed by the defendant as in charge of Insurance Services. I am well versed with facts requisite to be deponed in this affidavit.*
 - ii. In support of the application dated 10th November, 2025 I wish to state as follows:-*
 - a. Judgement was entered in favour of the plaintiffs/respondents on 14/10/2025. By the said judgment this honourable court awarded the plaintiffs an aggregate sum of Kshs.3,999,072.00.*
 - b. The applicant being aggrieved with the whole of the judgement of this honourable court has preferred an appeal*

against the same (on liability and quantum of damages awarded), being Eldoret HCCA No. E279 of 2025-copy of Memorandum of Appeal hereto at pages 1 and 2 of the attached bundle marked KP.

c. The applicant will suffer substantial loss in the event that execution proceedings take place to enforce the judgment of this honourable court. This is why:-

- The sum paid will most likely be incapable of restitution. The respondents' whereabouts and financial ability to retribute the said sum is unknown. The applicant is apprehensive that any amount it pays will not be recovered.*
- The appeal filed will be rendered nugatory/academic.*
- In the likely event of the appeal succeeding the applicant will lose the entire judgement sum inclusive of costs -yet to be assessed as of the date hereof.*

iii. The appeal filed by the applicant will be rendered nugatory should execution proceedings take place as the respondents have no known means of financial ability which will ensure refund of any monies paid out, in the likely event that the appeal is ultimately successful. In any event, any monies payable will be paid to the estate of the deceased whose value is unknown.

iv. The applicant offers a bank guarantee covering the entire judgement award as security to guarantee performance of the eventual decree of this honourable court. The bank guarantee is the least disadvantageous form of security to the applicant.

v. This application has been filed with due promptitude as the subject appeal was lodged on 8th November, 2025.

vi. It is in the wider interests of justice that the appellant's right of appeal be preserved/given effect.

vii. The respondents shall not be prejudiced in the event that the instant application is upheld as the judgement award will be

secured by the Bank Guarantee which the applicant proposes to issue as security.

- viii. The applicant's appeal raises substantial issues of law and fact, is arguable and has high chances of success.*
- ix. Preserving the substance of litigation will enable the court to substantively deal with the application at inter partes stage. The court will be in a position to render justice to the parties on equal footing without granting undue advantages to either party.*
- x. Execution will in all reasonableness be undertaken should this application be processed in the ordinary course of events-which underscores the need to entertain this application on priority basis.*
- xi. This honourable court has inherent jurisdiction to issue such orders as will secure and/or further justice to the parties.*
- xii. The nature of this application is such that the same ought to be dealt with on priority basis.*
- xiii. All facts herein deponed are save where the same constitute my information the source of which I have disclosed and verily believe to be true within my own knowledge and are true and I verily believe the same to be true.*

Decision

4. This Application was filed under Certificate of Urgency on 10th November 2025. It is an Appeal against the Judgement of Lower court in CMCC E096 of 2024. The Memorandum of Appeal is grounded on the following justiciable issues on the Appeal;
- a. The learned trial magistrate erred by finding the defendant liable when evidence adduced clearly pointed at the sole culpability of the deceased.*
 - b. The learned trial magistrate erred in his apportionment of liability in any event.*
 - c. The learned trial magistrate in his assessment of loss of dependency.*

- d. *The judgement of the learned trial magistrate was against the weight of evidence tendered.*
- e. *The learned trial magistrate erred in his analysis of the evidence tendered.*
- f. *The judgement of the learned trial magistrate is a miscarriage of justice.*

GROUNDS WHEREFORE the appellant prays that:-

- i. *The judgement of the learned trial magistrate be set aside in its entirety and be substituted with a judgement of this honourable court dismissing with costs Eldoret MCCC No. E096 of 2024. In the alternative:-*
 - ii. *This honourable court do analyze evidence tendered and do find the deceased substantially culpable for the accident which led to his death.*
 - iii. *This honourable court do re-analyze the evidence tendered and do accordingly find re-assess damages awarded for loss of dependency. In any event*
 - iv. *Costs of this appeal and of Eldoret MCCC No. E096 of 2024 be awarded to the appellant.*
5. The provisions of the law on Article 50 on a right to a fair hearing is all about giving the litigants a chance to represent their case. The timelines in the statute and those issued by the court during the pre-trial conference on or consideration of the matter during the first instance ex parte when a certificate of urgency has been filed there is a legitimate expectation that there should be no default of the orders without any justification or excuse. The manual and electronic records of the court are indicative of the fact by the directions given by this court are yet to be complied with. This court cannot be held at ransom. There is already a notice of motion on record and an affidavit in support of the motion as filed by the applicant.
6. The key principles of granting a stay pf execution pending appeal as provided for under Order 42 Rule 6 (2) of the Civil Procedure Rules the

key principles in which stay may be granted or refused as demonstrated by various authorities include the following;

- *Discretionary Power: The court has unfettered discretion to grant a stay, which must be exercised judicially.*
- *General Rule: A successful litigant should be able to enjoy the "fruits of judgment".*
- *Burden of Proof: The applicant bears the burden of proving that "special circumstances" or exceptional reasons exist to justify a stay.*
- *Ruination/Nugatory Appeal: The most common ground is demonstrating that the appeal would be rendered useless (nugatory) or that the appellant would be ruined without the stay.*
- *Prospect of Success: The appeal must have an arguable ground, not a fanciful one.*
- *Balance of Justice/Harm: The court balances the rights of both parties and considers where the risk of injustice lies.*
- *Security: Courts may impose conditions, such as the provision of security for the due performance of the decree, as a condition for granting a stay.*

7. This application essentially proceeded as an undefended suit or interlocutory application. The effect of it is to grant the following orders;

- i. That a temporary stay of execution of the judgement in MCCC E096 OF 2024 be granted pending the hearing and determination of the intended appeal. As a consequence of this order the Appellant shall file a Record of Appeal having it served upon the Respondents for a pre-trial conference to be held on 17/2/2026.
- ii. That in the event of default by the Appellant of the 21 days scheduled to file the Record of Appeal the court could have assumed that the appeal is no longer tenable.

**GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 14TH
DAY OF JANUARY 2026**

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**R. NYAKUNDI
JUDGE**