

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SMALL CLAIMS APPEAL NO. E082 OF 2025

ANTHONY NJENGA MUNA.....1ST APPELLANT

-VERSUS-

TILE & CARPET CENTRE.....1ST RESPONDENT

JOSEPH MBAYIA.....2ND RESPONDENT

RULING

- 1) The application coming for consideration in this ruling is the one dated 24/6/2024 seeking stay of execution pending appeal.
- 2) The application is based on the grounds on the face of it supported by the affidavit of the 1st appellant/applicant sworn on 24/6/2024.
- 3) The deponent, Anthony Njenga Muna, states he has the authority to swear the affidavit on behalf of the second applicant.
- 4) He explains that the court dismissed their application for a stay of execution on May 30, 2025, a ruling attached as "ANM 1." This ruling allowed the auctioneer's proclamation

notice of November 29, 2024, to stand, which lists numerous household items and motor vehicles for attachment.

- 5) He states that the original judgment arose from a material damage claim dating to July 21, 2020. At that time, the first applicant was insured by Trident Insurance Company under a valid policy.
- 6) However, despite the judgment against them, the insurer has not paid the decretal amount.
- 7) The applicants claim they had a legitimate expectation that the insurer would settle the claim, as the policy covered the risk for which they were sued.
- 8) Following the dismissal of their application in the lower court, the applicants filed a Memorandum of Appeal on June 16, 2025, attached as "ANM 3."
- 9) They argue that the earlier proclamation notice remains valid and enforceable, putting their property at immediate risk of attachment.
- 10) They contend that their appeal raises arguable issues, particularly regarding their legitimate expectation and the pending declaratory suit they have filed against Trident

Insurance Company and the respondent at the Milimani Magistrates' Court (Case No. E6701 of 2024), a plaint for which is attached as "ANM 4."

- 11) They argue they will suffer substantial loss if execution proceeds and are willing to provide security for costs.
- 12) They believe the appeal risks being rendered nugatory without a stay and that neither party will be prejudiced by granting it.
- 13) From the Respondent's Replying Affidavit, the deponent, an advocate for the respondent's insurer, opposes the application as frivolous, vexatious, and an abuse of court process.
- 14) They outline the history of the case, noting that judgment was entered against the applicants personally for negligence on December 15, 2023, and not against their insurer.
- 15) They point out that the applicants' similar application for a stay was already dismissed by the trial court on May 30, 2025.

- 16) The respondent argues that the mere pendency of a declaratory suit against an insurer does not legally bar the execution of a lawful decree against the judgment debtors.
- 17) They assert that the applicants should satisfy the judgment and then seek indemnity from their insurer through the declaratory suit.
- 18) They highlight that the applicants appear to be financially capable of paying the decretal sum, given the value of the assets listed for attachment.
- 19) The respondent contends that granting a stay would unfairly prejudice them as the decree-holder, holding them "hostage" to the outcome of a separate suit to which they are not a party, and would only serve to further delay justice.
- 20) They pray for the application to be dismissed with costs so that execution may proceed.
- 21) The parties filed written submissions as follows; The Appellants submitted that they seek an order for stay of execution pending appeal, premised on the imminent risk of attachment and sale of their proclaimed household goods and motor vehicle to satisfy a decree of Kshs. 526,315.

- 22) The central issue of their case is that they were insured under a policy with Trident Insurance Company for the liability in question.
- 23) While the insurer defended the original suit, it has failed to satisfy the resultant decree, compelling the Appellants to institute a separate declaratory suit to enforce the insurance policy.
- 24) They argue that the ruling from the Small Claims Court, which declined to stay execution, exposes them to irreparable loss and would render their appeal nugatory, as their properties would be lost before the matter is adjudicated.
- 25) The Appellants contend that the appeal raises triable issues regarding their obligation to pay the decretal sum personally given the existence of insurance coverage.
- 26) They assert there has been no undue delay in bringing the application, filed within 30 days of the challenged ruling.
- 27) Furthermore, they express a willingness to provide such security as the court may deem fit for the due

performance of the decree, emphasizing that the provision of security is a matter for the court's discretion.

- 28) The submissions ultimately urge the court to preserve the status quo to prevent substantial loss and to allow the interrelated issues in the pending appeal and the declaratory suit to be determined on their merits.
- 29) The Respondent submitted that the Applicants' application to delay payment of the decretal sum should be dismissed with costs awarded to the 1st Respondent.
- 30) It is contended that the outcome and duration of the Applicants' separate declaratory suit against their insurer are uncertain, making it unjust to withhold settlement.
- 31) The 1st Respondent, not being a party to the insurance contract, should not be prejudiced by that dispute.
- 32) The submissions further assert that the Applicants, given the value of their attached properties, are financially capable of paying the decretal sum first and subsequently seeking compensation from their insurer.
- 33) The application is characterized as a meritless tactic to delay the 1st Respondent from enjoying the fruits of its judgment.

34) On costs, the submissions invoke the principle that "costs follow the event," as provided under Section 27(1) of the Civil Procedure Act and affirmed by precedent, arguing that the unsuccessful Applicants should bear the costs of this application.

35) The issues for determination in the Application dated 24/6/2024 as follows;

- (i) whether the Applicants/Appellants have met the legal threshold for an order of stay of execution pending appeal, and**
- (ii) whether the existence of a pending declaratory suit against their insurer presents a special circumstance warranting the court's intervention to forestall execution.**

36) The governing law is Order 42, Rule 6(2) of the Civil Procedure Rules, which requires an applicant to demonstrate that substantial loss may result unless the order is made; that the application has been made without unreasonable delay; and that such security as the court orders for the due performance of the decree has been given or offered.

- 37) The purpose of this provision is to strike a fair balance between the unchallenged right of a decree-holder to the fruits of their judgment and the need to ensure that an appeal is not rendered an empty exercise.
- 38) The court's discretion must be exercised judiciously, not only on the basis of rigid rules but also considering the unique circumstances and the greater interest of justice in each case.
- 39) In the present matter, the Applicants' central contention is that they were insured at the material time, that their insurer defended the primary suit, and that they have now been compelled to file a declaratory suit to enforce the insurance policy.
- 40) They argue that being forced to satisfy the decree personally before the determination of that suit would cause them substantial loss.
- 41) The Respondent counters that a decree-holder should not be held hostage to litigation to which it is not a party, and that the Applicants, who own several valuable assets, should pay first and then seek indemnity.

- 42) I have considered both positions. It is true that a dispute between a judgment debtor and his insurer is a separate matter that does not automatically bar execution against the debtor. The Respondent is entitled to the benefit of its judgment.
- 43) However, the court must also be alive to the potential injustice where a party, who legitimately expected cover from an insurer, is stripped of their property only for the insurer to later be compelled to pay the same sum.
- 44) This could lead to a situation where the Applicants suffer irremediable loss while the insurer retains the premium and avoids its obligation.
- 45) The unique circumstance here is the pending declaratory suit, Milimani CMCC No. E6701 of 2024.
- 46) While its pendency alone is not a bar to execution, it introduces a distinct equitable consideration.
- 47) The court's duty is to administer justice and prevent an outcome that is manifestly harsh.
- 48) In this case, the interests of justice would be better served by preserving the status quo in a manner that

secures the decree-holder's position without visiting undue hardship upon the Applicants.

49) Consequently, while the strict application of Order 42, Rule 6(2) might not be fully satisfied on the traditional notion of "substantial loss," I find that the existence of the declaratory suit constitutes a special circumstance.

50) To hold the ring and ensure that neither party is unfairly prejudiced, I will exercise my discretion under Section 3A of the Civil Procedure Act and inherent jurisdiction to fashion a conditional order that safeguards all interests.

51) Therefore, the application for stay of execution is granted on the following specific and strict conditions;

- (i) THAT the entire decretal sum, together with any accrued interest and assessed costs, shall be deposited by the Applicants into a joint interest-earning account in the names of the Advocates for the Applicants and the 1st Respondent within thirty (30) days from the date of this ruling.

(ii) THAT in the alternative, the Applicants may provide a Bank Guarantee from a reputable commercial bank, in favour of the 1st Respondent, for the full decretal sum plus interest and costs, valid until the determination of the declaratory suit, to be issued within the same period.

(iii) THAT upon compliance with either condition (1) or (2) above, there shall be a stay of any further execution proceedings, including attachment and sale, pending the hearing and determination of Milimani CMCC No. E6701 of 2024: Anthony Njenga Muna & Another v Trident Insurance Company & Another.

52) The Applicants are hereby directed to prosecute the said declaratory suit with utmost diligence and without delay.

53) In the event of default in complying with condition (1) or (2) within the stipulated thirty (30) days, this order for stay shall automatically lapse and the 1st Respondent shall

be at liberty to proceed with execution forthwith without further reference to the court.

54) The costs of this application shall be in the cause of the intended appeal.

55) Orders to issue accordingly.

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this **22nd day of January, 2026.**

.....
A. N. ONGERI
JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent