

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC APPEAL NO. E003 OF 2025

WILLIAM MUTHEE MUTHAMI

APPELLANT

VERSUS

FRANCIS NDUNGU NJENGA

RESPONDENT

RULING

1. Before me for determination is the Appellant's Notice of Motion application dated 28th April 2025 seeking a stay of execution of the Judgment delivered on 14th November 2024 and the ruling delivered on 25th April 2025.
2. The application is based on the grounds set out on the face of the Notice of Motion and the Appellant's supporting Affidavit sworn on the 28th day of April 2025. In the said affidavit he deposes that on 14th November 2024, the lower court dismissed his case and allowed the Respondent's Counterclaim. The court subsequently dismissed his application for review on 25th April 2025. It is his further deposition that he has appealed against the decision of the lower court and if a stay is not granted, he shall suffer substantial loss including loss of rent arrears, eviction from the demised premises, disconnection of electricity and loss of business.

3. He claims that he has invested heavily in the development of the demised premises which are currently valued at Kshs. 30,000,000/=. He adds that there is a sum of Kshs. 604,000/= deposited in the joint account of the advocates of the parties which is available as security for costs. He states that he is willing to continue depositing the monthly rent into the joint account pending the determination of the appeal. He is of the view that the application has been filed without undue delay.
4. The application was opposed by the Respondent. The court directed that the application be canvassed by way of written submissions and both parties filed their submissions which I have read and considered in arriving at my decision.

ANALYSIS AND DETERMINATION

5. Having examined the application, response thereto and the rival submissions, the only issue for determination is whether a stay of execution pending appeal ought to be granted.
6. Order 42 rule 6(2) of the Civil Procedure Rules, 2010, prescribes the conditions under which a stay of execution may be granted. The provision reads:

“No order for stay of execution shall be made under sub-rule (1) unless -

(a) The court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

(b) Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

7. and that the application has been advanced promptly, untainted by undue delay. Second, the provision mandates the furnishing of security to safeguard the eventual enforcement of the decree or order, thereby protecting the interests of the Respondent.
8. The requirements underscore the Court’s duty to strike a careful balance between preserving the rights of the Applicant pending appeal and ensuring that the Respondent is not prejudiced by the temporary suspension of execution.
9. In effect, the Court is called upon to exercise its discretion with circumspection, ensuring that equity, fairness, and judicial prudence converge in the assessment of whether a stay should issue.
10. I will begin by considering whether the Applicant has demonstrated that the refusal of a stay would occasion him substantial and irreparable loss. The Applicant has deponed that he has heavily invested in the suit property and the same is currently valued at Kshs. 30,000,000. This has not been disputed by the Respondent. He has also claimed that the stay is not granted, his electricity is likely to be disconnected and he will suffer financial loss. He also fears that he may be evicted from the demised premises. Considering the amount he has invested in the suit premises, I am persuaded that whatever loss he would suffer if a stay is not granted is substantial.

11. On the question of delay, the impugned judgment was delivered on 14th November 2024. The Appellant subsequently filed an application for review which was decided vide a ruling dated 25th April 2025. The instant application was filed 3 days after the dismissal of the application for review hence there was no delay.
12. With regard to the security for costs, the Appellant has indicated that the amount of Kshs. 604,000 /= deposited in the joint account of the parties' advocates may be treated as security for costs.
13. In his submissions, learned counsel for the Respondent has pointed out that although the said amount is available, the Respondent's previous advocate passed away. He has also complained that the Appellant stopped depositing the rent in September 2024 and he is currently in arrears and he should therefore not be granted the stay.
14. Balancing the interests of the Appellant and those of the Respondent, and so as not to render the appeal nugatory, I allow the application on condition that the appellant deposits the sum of Kshs. 1,120,000/= being the outstanding rent at the rate of Kshs. 70,000/= from September 2024 to 31.12 2025 within 30 days. Thereafter the applicant shall continue paying the monthly rent of Kshs.70,000 in a joint interest earning account in the names of the Appellant's advocate and the Respondent's current advocate until the appeal is heard and determined. The sum of Kshs. 604,000/= currently held in the joint account shall remain in the account until the appeal is heard and determined.

15. The costs of the application shall abide the outcome of the appeal.

Dated, signed and delivered virtually at Thika this 20th day of January 2026.

**J. M ONYANGO
JUDGE.**

In the presence of:

Mr Kihara for the Appellant/ Applicant

Mr Nyakundi for the Respondent

Court Assistant: Hinga