



**Rayan Coach Limited v Makau (Suing as the personal representative of the Estate of Dickson Makau Ndambuki) (Civil Case E340 of 2024) [2026] KEHC 125 (KLR) (14 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 125 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CIVIL CASE E340 OF 2024  
RC RUTTO, J  
JANUARY 14, 2026**

**BETWEEN**

**RAYAN COACH LIMITED ..... APPELLANT**

**AND**

**DOMINIC NDAMBUKI MAKAU (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF DICKSON MAKAU NDAMBUKI) ..... RESPONDENT**

**RULING**

1. Before this court for determination is a Notice of Motion Application seeks the following orders: -
  - a. Spent
  - b. Spent
  - c. An order for stay of execution of the judgment in Kithimani MCCC 144 of 2024 delivered on 4<sup>th</sup> December 2024, pending the hearing and determination of the appeal herein
  - d. Leave for the appellant/applicant to furnish security in the form of a Bank Guarantee from Family Bank pending hearing and determination of this Appeal.
  - e. Costs of this application abide the outcome of the appeal
2. The application is supported by the grounds set out on the face of the application and the affidavit sworn by Ibrahim Omar, the applicant's operational manager. He depones that judgment was delivered on 4<sup>th</sup> December 2024, wherein the applicant was found to be 100% liable. The trial court proceeded to award quantum as follows; general damages for pain and suffering ksh.100,000/-; damages for loss of expectation of life kshs.100,000/-; loss of dependency kshs.6,880,000/-; special damages of kshs.210,530/- plus costs and interest.



3. The applicant state that it had lodged an appeal challenging both liability and quantum, and the appeal has a greater chance of succeeding. It is contended that if execution proceeds and the decretal sum is paid to the respondent, recovery may be impossible should the appeal succeed. Further if stay is not granted the appeal will be rendered nugatory. The applicant maintains that the application has been brought in good faith and without undue delay.
4. In response, the Respondent filed a Replying Affidavit sworn by Dominic Ndambuki Makau. He argues that, the application is fatally defective for contravening Order 19 rule 3(1), as the supporting affidavit was sworn by a person who is not a party to this suit. He therefore urges the court to dismiss the application as incompetent and inadmissible.
5. The respondent further contends that the applicant has failed to satisfy the conditions for grant of stay of execution under Order 42 rule 6 of the Civil Procedure Rules. He asserts that there has been inordinate delay in filing of the application; that the bank guarantee offered has expired; he continues to suffer prejudice as he cannot enjoy the benefits of the judgment and that in the event the appeal succeed, he is willing and able to refund the decretal sum to the applicant.
6. The respondent therefore urges the court to find that the application is an abuse of the court process and to dismiss it for lack of merit.
7. The application was canvassed by way of written submissions.
8. Upon considering the application and the grounds advanced, the rival submissions of the parties, and the numerous authorities cited, the central issue for determination is whether this court should grant an order for stay of execution pending the hearing of the appeal.
9. Before addressing the substantive issues, I must deal with the preliminary objection raised by the respondent—namely, whether the application is fatally defective for contravening Order 19 Rule 3(1) of the Civil Procedure Rules. The respondent argues that the supporting affidavit was sworn by a person who is not a party to the suit. Order 19 Rule 3(1) provides: “Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove: Provided that in interlocutory proceedings, or by leave of the court, an affidavit may contain statements of information and belief showing the sources and grounds thereof.”
10. In this case, the supporting affidavit was sworn by Ibrahim Omar, who describes himself as the applicant’s operational manager and states that he is conversant with the facts and issues before the court. I find no fatal defect in this arrangement, as the deponent has demonstrated a clear relationship with the applicant and confirmed knowledge of the matters deponed. Accordingly, the respondent’s objection fails.
11. Turning to the substantive law, Order 42 Rule 6 of the Civil Procedure Rules governs the grant of stay of execution. It sets out three key principles that must be satisfied before such orders can be granted. These principles are well established in authorities; see the case of *Giella vs. Cassman Brown* (1973) E.A 358 and *Mrao Ltd V First American Bank of Kenya Ltd & 2 Others* [2003] eKLR.
12. Thus, a party seeking a stay of execution should demonstrate that the application for stay was filed without unreasonable delay; a substantial loss will result if the stay orders are not granted and that adequate security for the due performance of such decree or order has been provided.
13. In the present case, judgment was delivered on 4th December 2024, and the application was filed on 22nd January 2025. Taking into account the court recess period, during which time does not run, I find that the application was filed timeously and without undue delay.



14. On the issue of substantial loss, the applicant must show that denial of stay would cause irreparable prejudice. The applicant contends that the decretal sum is substantial and that they have a strong appeal with high chances of success. In *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] eKLR, the court held that substantial loss entails circumstances where execution would irreparably affect or negate the very essence of the applicant’s appeal. This principle was echoed in *Silverstein v Chesoni* [2002] 1 KLR 867 and *Mukuma v Abuoga*, where the courts emphasized that substantial loss is the cornerstone of the jurisdiction to grant stay, as it ensures the appeal is not rendered nugatory.
15. I note that if execution proceeds and the applicant subsequently succeeds on appeal, the decretal sum will have been paid in vain, thereby prejudicing the applicant. Conversely, the respondent is entitled to enjoy the fruits of a valid judgment. The court must therefore strike a balance between protecting the applicant from irreparable loss and safeguarding the respondent’s rights. The applicant has expressed willingness to provide security in the form of a bank guarantee, while the respondent proposes that either half the decretal sum be paid to them with the balance deposited in a joint interest-earning account, or that the entire decretal sum be deposited in such an account.
16. Given that there is a valid judgment in place which has not been set aside or varied, it is imperative to secure the respondent’s interests while preserving the applicant’s right of appeal.
17. Accordingly, I order that there be a stay of execution of the decree pending hearing and determination of the appeal on the following conditions:
  - a. The applicant shall deposit security in form of a bank guarantee for the entire decretal sum in court. The bank guarantee should be specific to this decree and valid until determination of the appeal. Alternatively, the applicant may deposit half the decretal sum in a joint interest-earning account in the names of both parties’ advocates. Either of the option must be effected within forty-five (45) days.
  - b. Failure to furnish the required security within forty-five (45) days shall result in the lapse of the stay, and the respondent shall be at liberty to proceed with execution.
  - c. Costs of this application shall abide the outcome of the appeal.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 14<sup>TH</sup> DAY OF JANUARY, 2026**

**RHODA RUTTO**

**JUDGE**

In the presence of;

.....for Appellant

.....for Respondent

Selina Court Assistant

