Crown Paints Kenya Limited v Punjab Paints Kenya Limited (Civil Appeal E185 of 2025) [2026] KEHC 412 (KLR) (22 January 2026) (Ruling)

Neutral citation: [2026] KEHC 412 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT THIKA

CIVIL APPEAL E185 OF 2025

FN MUCHEMI, J

JANUARY 22, 2026

BETWEEN

CROWN PAINTS KENYA LIMITED .... APPLICANT

AND

PUNJAB PAINTS KENYA LIMITED .... RESPONDENT

RULING

Brief Facts

1. The application for determination dated 24th July 2025 seeks for orders of stay of execution in respect of the judgment in Thika CM Civil Suit No. E021 of 2021 delivered on 16th June 2025 pending the hearing and determination of the appeal.

2. In opposition to the application, the respondent filed Grounds of Opposition and a Replying Affidavit dated 19th September 2025.

Applicant's Case

3. The applicant states that judgment in the trial court was delivered on 16th June 2025 for a sum of Kshs. 3,500,000/- together with costs of the suit in favour of the respondent. Being aggrieved with the judgment, the applicant filed an appeal. The applicant is apprehensive as the respondent has commenced the process of execution and without an order of stay of execution, the respondent will proceed with the intended execution rendering the appeal nugatory thus causing it to suffer substantial loss. The applicant avers that the appeal is arguable and has a high likelihood of success. The applicant states that they are ready and willing to abide by any conditions in terms of security that may be set by the court.

The Respondent's Case

4. The respondent states that there has been inordinate and unexplained delay of over forty days after the delivery of the judgment on 16th June 2025 in the trial court.

5. The respondent avers that the applicant has not annexed a memorandum of appeal for perusal by the court to ascertain whether the appeal is arguable or has a high likelihood of success. The respondent further states that the deponent in the supporting affidavit dated 24th July 2025 has not annexed her authority to act on behalf of the applicant, neither has she produced her contract of employment or any board resolution to that effect. Further from the deponent's tone she is no longer the Group Marketing Assistant branding of the applicant thus leaving more gaps than answers as it is not clear whether she has any relationship whatsoever with the applicant.

6. The respondent further states that the deponent's signature is fatally defective as it is an electronically appended signature which ought to be accompanied by a certificate pursuant to Section 106B of the *Evidence Act*. The respondent states that the applicant has not shown any sufficient reasons why execution of the judgment and decree of the trial court should be stayed. Furthermore, the applicant has a character of indolence and abuse of the court process as he willingly absconded the main suit. The respondent argues that they proved their case on a balance of probability and found that the applicant to have trespassed their property and advertised illegally on the same by painting on its buildings and walls.

7. The respondent states that the applicant has continued to benefit from the illegal trespass over the years at their detriment. The respondent further states that no prejudice shall be suffered by the applicant if execution proceeds as they are at liberty to prosecute their appeal which if successful may entitle them to restitution.

8. Parties disposed of the application by way of written submissions.

The Applicant's Submissions

9. The applicant relies on the cases of Edward Kamau & Another vs Hannah Mukui Gichuki & Another [2015] eKLR and James Wangalwa & Another vs Agnes Naliaka Cheseto [2012] eKLR and submits that the decretal sum amounts to Kshs. 5,606,252/- is colossal and the respondent has not sworn any affidavit of means to show its financial standing should the appeal succeed. The applicant argues that it will be reduced to a mere explorer in the judicial process if it pays over the decretal sum to the respondent.

10. Relying on the case of Chege vs Sparrow Transport Limited & Another (Miscellaneous Civil Case E109 of 2024) [2025] KEHC 2969 (KLR) (13 March 2025) (Ruling), the applicant submits that there has been no inordinate delay in filing the instant application as it was filed on 24th July 2025 whereas the judgment was delivered on 16th June 2025 and appeal lodged on 15th July 2025.

11. On the issue of security, the applicant submits that it deposited half the decretal sum in court as directed on 20th August 2025. The applicant further refers to the cases of Butt vs Rent Restriction Tribunal Civil App No. NAI 6 of 1979 and Absalom Dova vs Tarbo Transporters [2013] eKLR and submits that the respondent's right to enjoy the fruits of the judgment ought to be balanced against the right of the applicant not to be ousted from the seat of justice by denying them stay.

12. The applicant submits that Monica Ndonga executed documents relating to the proceedings in the lower court and the respondent did not raise any objection. The applicant further relies on the case of Raymark Limited vs John Lokorio [2021] eKLR and submits that the intention behind Order 4

Rule 1(4) of the Civil Procedure Rules was to safeguard the corporate entity by ensuring that only an authorized officer could institute proceedings on its behalf and not to be utilized as a procedural technicality to strike out suits.

The Respondent's Submissions

13. The respondent submits that it lawfully commenced execution and on 16th August 2025 by proclaiming the goods for attachment. The respondent relies on Order 42 of the Civil Procedure Rules and the cases of Halai & Another vs Thornton & Turpin (1963) Ltd [1990] KLR 365 and Antoine Ndiaye vs African Virtual University [2015] eKLR and submits that the applicant has not met the conditions for grant of orders of stay of execution.

14. The respondent relies on the case of Kenya Shell Ltd vs Benjamin Karuga Kibiru [1986] KLR 40 and submits that the contentions by the applicant that it lacks the financial capability to refund the decretal sum is legally hollow, speculative and unsupported by any admissible evidence. The respondent argues that the applicant must go beyond the bare allegations and place before the court cogent material demonstrating their real, actual and irreversible loss will occur if stay is denied. The applicant has failed to place before the court evidence to demonstrate that the respondent is impecunious, incapable of refunding the decretal sum or that execution would irreparably destroy the applicant's substratum of appeal. Relying on the case of National Industrial Credit Bank Ltd vs Aquinas Francis Wasike [2006] eKLR, the respondent argues that the evidential burden shifts to them after the applicant lays a reasonable factual foundation of inability to refund.

15. The respondent further relies on the cases of Machira t/a Machira & co. Advocates vs East African Standard (No.2) [2002] KLR 63 and Mukuma vs Abuoga [1988] KLR 645 and submits that the decree herein is a money decree and the payment of a lawful money decree does not of itself amount to substantial loss.

16. The respondent submits that judgment was delivered on 16th June 2025 and the applicant filed the instant application on 24th July 2025 which is forty days later and the second application on 18th August 2025, sixty four days after judgment and only after they had proclaimed attachment of the applicant's property. Such delay is inordinate, unexplained and clearly strategic betraying an attempt to manipulate the court process rather than advance bona fide legal rights. To support its contentions, the respondent relies on the cases of Butt vs Restriction Tribunal [1979] eKLR and Kiplagat Kotut vs Rose Jebor Kipngok [2015] eKLR.

17. The respondent submits that the applicant deposited half the decretal sum in compliance with the condition imposed in the interim orders of 20th August 2025. However such compliance cannot cure the fundamental and incurable defects inherent in the application which include inordinate delay, failure to demonstrate substantial loss, a defective supporting affidavit and lack of corporate authority to institute the proceedings. The respondent argues that security for due performance while necessary does not validate an application that is otherwise incompetent, frivolous or vexatious.

18. The respondent argues that no memorandum of appeal was annexed thereby rendering the alleged appeal purely speculative and incapable of judicial interrogation as to its arguability. To support its contentions, the respondent refers to the decision in Halai & Another vs Thornton & Turpin [1990] KLR 365.

19. The respondent argues that the supporting affidavit is incurably defective in law as it lacks corporate authority in the form of a board resolution, written authority or contract of employment to demonstrate capacity to swear the affidavit on behalf of the applicant company. Relying on the cases of Affordable Homes Africa Ltd vs Ian Henderson [2004] eKLR and Leo Investment Ltd vs Estuarine

Estate Ltd [2017] eKLR, the respondent submits that a corporation can only act through duly authorized officers and in the absence of such proof, pleadings and affidavits are rendered incompetent. Further, the respondent submits that the affidavit bears an electronically appended signature but is unsupported by a certificate of authentication as mandatorily required under Section 106B of the *Evidence Act*. In the absence of such statutory certification, the document is inadmissible in evidence and incapable of grounding any judicial relief.

20. The respondent refers to the case of Muchanga Investments Ltd vs Safaris Unlimited (Africa) Ltd [2009] eKLR and submits that applicant has demonstrated a pattern of deliberate procedural misconduct amounting to abuse of the court process. The applicant absconded trial, filed and abandoned a third party application and has remained in continued trespass upon its property since 2017 unlawfully deriving commercial benefit therefrom.

21. The respondent submits that the impugned judgment is well reasoned, legally grounded and firmly anchored in settled principles on damages for trespass. The award of Kshs. 3,500,000/- was not arbitrary or excessive but lawful and proportionate in line with the prolonged and aggravated trespass. Further, the respondent argues that filing an appeal does not of itself operate as a stay and a successful litigant is entitled to the fruits of the judgment unless sufficient legal cause is demonstrated.

22. The main issues for determination are:-

    a. Whether the application is fatally defective for want of filing a resolution authorizing Monica Ndonga to plead on behalf of the applicant.

    b. Whether the applicant has satisfied the conditions set out in Order 42 Rule 6 of the Civil Procedure Rules for stay of execution pending appeal.

The Law.

Whether the application is fatally defective for want of filing a resolution authorizing Monica Ndonga to plead on behalf of the applicant

23. The respondent is seeking for the application to be struck out on the ground that the applicant did not file a resolution or authority authorizing Monica Ndonga, the Group Marketing Assistant to swear the affidavit on the applicant's behalf.

24. The applicant argued that the said Monica Ndonga executed documents relating to the proceedings in the lower court and the respondent raised no objection.

25. Courts have consistently held that, even where such a resolution is a requirement, the board resolution may be filed at any time before a suit is fixed for hearing. In the case of Leo Investments Ltd vs Trident Insurance Company Ltd (2014) eKLR where the court stated:-

> ....such a resolution by the Board of Directors of a company may be filed at any time before the suit is fixed for hearing as there is no requirement that the same be filed at the same time as the suit. Its absence is, therefore not fatal to the suit.

26. The Court of Appeal in the case of Spire Bank Limited vs Land Registrar & 2 Others [2019] eKLR stated as follows:-

> It is essential to appreciate that the intention behind Order 4 Rule 1 (4) was to safeguard the corporate entity by ensuring that only an authorized officer could institute proceedings on its behalf. This was to address the mischief of unauthorized persons instituting proceedings

on behalf of corporations, and obtaining fraudulent or unwarranted orders from the court. The company's seal that is affixed under the hand of the directors ensured that they were aware of, and had authorized such proceedings together with the persons enlisted to conduct them. And where evidence was produced to demonstrate that a person was unauthorized, the burden shifted to such officer to demonstrate that they were authorized under the company seal. With this in mind, we dare say that the provision was not intended to be utilized as a procedural technicality to strike out suits, particularly where no evidence was produced to demonstrate that the officer was unauthorized.

27. From the foregoing, it is clear that the deponent has not produced the authority permitting her to swear the affidavit on behalf of the applicant. Although the respondent argues that the said deponent was unauthorized, the applicant has a window of rectifying the anomaly. The law is clear that such a resolution by the Board of Directors of a company may be filed at any time before the suit is fixed for hearing and its absence is not fatal to the suit. Accordingly, this court is bound by Article 159(2)(d) of the *Constitution* which enjoins the court to administer justice expeditiously and without undue regard to procedural technicalities and finds that finding that the applicant did not file the requisite authority whilst filing the instant application will amount to a procedural technicality which is likely to deny a party justice.

28. The respondent has further argued that signature by the deponent is an electronic signature and therefore it ought to be supported by a certificate of authentication as mandatorily required under Section 106B of the *Evidence Act*.

29. I have perused the supporting affidavit dated 24th July 2025 and noted that the signature by the deponent is not an electronic signature as stated by the respondent. In any event, if the respondent is alleging that the signature of the deponent is electronic and disputes the said electronic signature as being the deponent by virtue of Section 106D of the *Evidence Act*, the court may direct that the person or the certification service provider do produce the electronic signature certificate or any other person to apply the procedure listed on the electronic signature certificate and verify the electronic signature purported to have been affixed by that person. It is my considered view that in the interests of justice, it would not be appropriate to strike out the affidavit while the *Evidence Act* provides that the court can direct that the deponent produce the electronic signature certificate. It is not in doubt that the copy of the affidavit in the court record does not have an electronic signature. However, it would not be in the interests of justice to strike out the affidavit. In any event, if the copy of the affidavit that the respondent has bears an electronic signature and the respondent is questioning the signature of the deponent, this court is empowered to direct that the electronic signature certificate be availed.

Whether the applicant has satisfied the conditions set out in Order 42 Rule 6 of the Civil Procedure Rules for stay of execution pending appeal.

30. It is trite law that an appeal does not operate as an automatic stay of execution. The conditions which a party must establish in order for the court to order stay of execution are provided for under Order 42 Rule 6(2) Civil Procedure Rules. Order 42 Rule 6 of the Civil Procedure Rules stipulates:-

    1. No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but the court appealed from may for sufficient cause order stay of execution of such decree or order and whether the application for such stay shall have been granted or refused by the court appealed from the court to which such appeal is preferred shall be at liberty on application being made to consider such application and to make such order thereon as may to it seem

just and any person aggrieved by an order of stay made by the court from whose decision the Appeal is preferred may apply to the appellate court to have such orders set aside.

2. 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 1st 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.

31. Thus, under Order 42 Rule 6(2) of the Civil Procedure Rules, an applicant should satisfy the court that:

    1. Substantial loss may result to him/her unless the order is made;

    2. That the application has been made without unreasonable delay; and

    3. The applicant has given such security as the court orders for the due performance of such decree or order as may ultimately be binding on him.

32. Substantial loss was clearly explained in the case of James Wangalwa & Another vs Agnes Naliaka Cheseto [2012] eKLR:-

> No doubt in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal…the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.

33. The applicant argues that they are apprehensive that the respondent shall proceed with execution at any time rendering the intended appeal nugatory.

34. It is trite law that execution is a lawful process and it is not a ground for granting stay of execution. The applicant is required to show how execution shall irreparably affect them or will alter the status quo to their detriment therefore rendering the appeal nugatory. On perusal of the record, the applicant only raised the issue of the respondent’s financial capabilities in their submissions. Thus, the issue being raised in their submissions, the respondent did not have a chance to show their financial capabilities in their affidavits but only rebutted the allegations in their submissions. It is trite law that submissions are not evidence. It is therefore, my considered view that the applicant has not demonstrated the substantial loss they stand to suffer.

Has the application has been made without unreasonable delay.

35. Judgment was delivered on 16th June 2025 and the applicant filed the instant application on 24th July 2025 and the memorandum of Appeal on 14th July 2025. It has taken the applicant one month and

eight days to file the present application. It is my considered view that a duration of one month and eight days does not amount to unreasonable delay. Thus the application has been filed timeously.

Security of costs

36. The purpose of security was explained in the case of Arun C. Sharma vs Ashana Raikundalia t/a Raikundalia & Co. Advocates & 2 Others [2014] eKLR the court stated:-

> " The purpose of the security needed under Order 42 is to guarantee the due performance of such decree or order as may ultimately be binding on the applicant. It is not to punish the judgment debtor.....Civil process is quite different because in civil process the judgment is like a debt hence the applicants become and are judgment debtors in relation to the respondent. That is why any security given under Order 42 Rule 6 of the Civil Procedure Rules acts as security for the due performance of such decree or order as may ultimately be binding on the applicants. I presume the security must be one which can serve that purpose.

37. Evidently, the issue of security is discretionary and it is upon the court to determine the same. The applicant complied with the orders of the court and deposited half the decretal sum in court as security to safeguard the existing orders of the court issued on 20th August 2025. However, security is only one of the requirements for grating stay pending appeal.

38. Additionally, grant of stay being a discretionary order, the court is expected to balance out the interests of the successful litigant and the applicant's unfettered right to file an appeal to fully ventilate his grievances. This was well stated in the case of M/s Porteitz Maternity vs James Karanga Kabia Civil Appeal No. 63 of 1997 where the court held:-

> That the right of appeal must be balanced against an equally weighty right, that of the plaintiff to enjoy the fruits of the judgment delivered in his favour. There must be a just cause for depriving the plaintiff of that right.

39. From the facts of this application, the interests of the respondent overrides those of the applicant in that he will not enjoy his judgment right if stay is not granted bearing in mind that the applicant has failed to demonstrate substantial loss.

40. Considering the provisions Order 42 Rule 6 of the Civil Procedure Rules, it is my considered view that the applicant has not met the threshold of granting stay of execution pending appeal. I have further considered the grounds of appeal and without going into the merits of the appeal, noted that no arguable points of law have been raised.

41. Accordingly, it is my considered view that the application dated 24th July 2025 lacks merit and is hereby dismissed with costs.

42. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 22ND DAY OF JANUARY 2026.

F. MUCHEMI

JUDGE