



REPUBLIC OF KENYA



**Chege & another v Kirui (Civil Appeal E029 of 2023)  
[2026] KEHC 343 (KLR) (21 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 343 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NANYUKI  
CIVIL APPEAL E029 OF 2023  
AK NDUNG’U, J  
JANUARY 21, 2026**

**BETWEEN**

**JAMES CHEGE ..... 1<sup>ST</sup> APPELLANT**

**REUBEN WANJAU NDONGA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**PAUL KIPLAGAT KIRUI ..... RESPONDENT**

**RULING**

1. Before this Court is a Notice of Motion dated 29<sup>th</sup> September 2023 brought under Order 42 Rule 6 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the *Civil Procedure Act*, and all other enabling provisions of the law. The Applicant seeks, inter alia, an order of stay of execution of the judgment and decree of the subordinate court delivered on 12<sup>th</sup> September 2023 pending the hearing and determination of the appeal filed herein.
2. The application is supported by the affidavit of Reuben Wanjau Ndonga. It is deposed that the trial court entered judgment against him in the sum of Kshs. 803,550 and the Appellants have lodged this appeal against the judgement and decree. and that unless stay is granted, the Respondent will proceed with execution, thereby rendering the appeal nugatory.
3. It is contended that the Applicant stands to suffer substantial loss, as the Respondent may not be in a position to refund the decretal sum should the appeal succeed. The Applicant further avers that the appeal raises arguable issues with high chances of success, and that the application has been filed without unreasonable delay. The Applicant expresses willingness to abide by any conditions on security that the Court may impose.
4. The application is opposed through grounds of opposition dated 28<sup>th</sup> May 2024.



5. The issue for determination is whether the Applicant has satisfied the conditions for grant of stay of execution pending appeal.
6. The principles governing stay of execution pending appeal are well settled under Order 42 Rule 6(2) of the Civil Procedure Rules. An applicant must demonstrate that:
  - a. He will suffer substantial loss unless the order is made;
  - b. The application has been made without unreasonable delay; and
  - c. He has provided or is willing to provide security for the due performance of the decree.
7. On the question of delay, the impugned judgment was delivered on 12<sup>th</sup> September 2023 and the present application was filed on 29<sup>th</sup> September 2023. I am satisfied that the application was lodged timeously.
8. Regarding substantial loss, it is not enough for an applicant to merely state that he will suffer loss. He must place material before the Court to demonstrate the likelihood of such loss. In the present case, the decretal sum is substantial. The Applicant has averred that the Respondent's means are unknown and that recovery may be difficult should the appeal succeed. The Respondent, on the other hand, has not placed before the Court cogent evidence of his financial ability to refund the decretal amount. The facts deponed to in the supporting affidavits have not been answered by the grounds of opposition filed. In the circumstances, I am persuaded that the Applicant has demonstrated the risk of substantial loss.
9. As to security, the Applicant has expressed willingness to furnish security in the form of a bank guarantee to be issued by family Bank Ltd. While am satisfied that the Appellant is alive to the need for offering security and has indeed offered a bank guarantee, I must state that the discretion of the court to direct what form of security to be offered should not be fettered. The requirement for security is mandatory and intended to balance the competing rights of the parties: the Appellant's right of appeal and the Respondent's right to enjoy the fruits of judgment. The court must have a free hand in the determination of the form of security.
10. In the result, I find the application merited and make the following orders:
  - a. There shall be an order of stay of execution of the judgment and decree of the subordinate court delivered on 12<sup>th</sup> September 2023 pending the hearing and determination of the appeal filed herein.
  - b. Such stay is conditional to the Applicants providing security for the entire decretal sum of Kshs. 803,550 in the form of a Bank Guarantee to be issued by Family Bank Limited within 14 days hereof in default the stay herein granted lapses.
  - c. Costs to abide the outcome of the Appeal.

**DATED SIGNED AND DELIVERED VIRTUALLY THIS 21<sup>ST</sup> DAY OF JANUARY 2026.**

**A.K. NDUNG'U**

**JUDGE**

