



**Fast Generation Limited v Isogoli & another (Appeal E074 of 2025)  
[2026] KEELRC 150 (KLR) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEELRC 150 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
APPEAL E074 OF 2025  
K OCHARO, J  
JANUARY 29, 2026**

**BETWEEN**

**FAST GENERATION LIMITED ..... APPELLANT**

**AND**

**JAPHET OPILI ISOGOLI ..... 1<sup>ST</sup> RESPONDENT**

**EQUITY BANK KENYA LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Background**

1. Before this Court is a Notice of Motion Application dated 5<sup>th</sup> May 2025, seeking a stay of execution of the decree in the Chief Magistrate’s Court, ELRC. No. 454 of 2019, pending the hearing and determination of this appeal. The application is supported by an affidavit sworn by Martin Njoroge on 5<sup>th</sup> May 2025 and a supplementary affidavit sworn by him on 15<sup>th</sup> June 2025.
2. The application is opposed by the 1<sup>st</sup> Respondent through a replying affidavit sworn by him on 9<sup>th</sup> July 2025, and the grounds of opposition, dated the same day.

**The Appellant’s Application**

3. The Applicant/Applicant states that the lower court entered judgment against him in the above-mentioned cause on 17th August 2023. On 22nd October 2024, he filed an application to set aside the ex parte judgment; however, the court dismissed it on 16th April 2025. The ruling dismissing the application is the subject matter of this appeal.
4. The Respondent had already initiated execution proceedings against him following the judgment and the decree that flowed therefrom. The execution included seizing his tools of trade and garnishing his bank account. This has crippled his business.



5. Unless the orders sought are granted, the Respondent is likely to carry out further execution of the decree, and that would occasion him further substantial loss. The appeal herein shall be rendered nugatory.
6. The justice of this matter demands that the orders of stay be granted to preserve the substratum of the appeal.

### **The Respondent's Response**

7. The Respondent states that following the judgment by the trial Court, he commenced execution proceedings against the Appellant/Applicant.
8. The Applicant filed an application dated 22<sup>nd</sup> October 2024 seeking orders for a stay of execution and setting aside of the ex parte judgment, which application was eventually dismissed on 16<sup>th</sup> April 2025.
9. The instant Application doesn't meet the threshold for granting a stay of execution pending appeal, as set out in Order 42 of the Civil Procedure Rules. The Applicant is guilty of indolence and has brought the application in bad faith.

### **Analysis and Determination**

10. The guiding principles for stay of execution are contained in Order 42 Rule 6[2] of the Civil Procedure Rules. It provides;
  - (2) No order for stay of execution or proceedings 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;
    - 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.”
11. This Court shall determine this application using the lens provided for in the as stated provision of the law.
12. This Court notes that the ruling, the subject matter of this appeal, was delivered by the trial Court on 16th April 2025, and that the instant application was filed on 5th May 2025. In my view, the application was filed without inordinate delay.
13. It is a trite principle of law, and judicial precedents have it, that it would not be enough for an Applicant for an order of stay of execution of a decree pending appeal, to just assert that he or she would suffer substantial loss, if the orders sought are not granted. He or she must present unambiguously the loss that he is likely to suffer.
14. The Appellant/Applicant, in his affidavits, explained in detail the loss he is likely to suffer if the orders sought in the instant application aren't granted. His properties were initially attached, seized and sold in execution of the lower court's decree. He further contends that any continued execution would totally cripple his business. The Respondent doesn't assert that the likely loss explained does not amount to a substantial loss, or that there is no likelihood that any continued execution shall not subject the Appellant/Applicant to loss. Consequently, I am persuaded that the Applicant has established that it will suffer substantial loss if the orders of stay pending appeal are not granted.
15. On the question of security pending appeal, this Court notes that, initially, execution was carried out against the Appellant. It follows that the Respondent has partially benefited from the decree. In light



of the totality of the circumstances, including that the judgment from which the decree flowed was an ex parte judgment, I am not inclined to order any deposit or provision of security.

16. In the upshot, the Applicant's application herein succeeds. There shall be a stay of execution of the lower court's decree pending the hearing and determination of this appeal. The costs of the application shall abide by the outcome of the appeal.
17. The Orders accordingly.

**READ, SIGNED, AND DELIVERED VIRTUALLY IN MOMBASA ON THE 29<sup>TH</sup> JANUARY 2026.**

**OCHARO KEBIRA**

**JUDGE**

