



**Jaldesa & another v Isak (Civil Appeal E033 of 2025)  
[2026] KEHC 495 (KLR) (Civ) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 495 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ISIOLO  
CIVIL  
CIVIL APPEAL E033 OF 2025  
SC CHIRCHIR, J  
JANUARY 22, 2026**

**BETWEEN**

**MOHAMED ABDI OLO ..... 1<sup>ST</sup> APPELLANT**

**ABDI OLO JALDESA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**FATUMA MOHAMED ISAK ..... RESPONDENT**

**RULING**

1. The Applicants' Notice of Motion dated 16<sup>th</sup> September 2025 seeks, among others, the following orders:
  - a. That the Honourable Court be pleased to order stay of execution of the judgment and any subsequent Decree of the Honourable Senior Resident Kadhi Hon. Gavava Awadh Mohamed delivered on 21st August 2025 pending hearing and determination of this Application.
  - b. That the Honourable Court be pleased to order stay of execution of the judgment and any subsequent Decree of the Honourable Senior Resident Kadhi Hon. Gavava Awadh Mohamed delivered on 21st August 2025 pending hearing and determination of the Appeal before this Court.
  - c. Any other relief that the Honourable Court deem fit to grant
  - d. The costs of this Application be provided for.

**The Applicants' case**

2. The Application is supported by the grounds appearing on the face of the Motion and the Supporting Affidavit of ABDI OLO JALDESA. The Applicants aver that judgment was entered in favor of the



Respondent on 21<sup>st</sup> August 2025, and they stand to suffer significant financial loss because the orders affect the 2<sup>nd</sup> Applicant's pension, which is his only source of their livelihood.

3. The Applicants further aver that the Respondent approached the Kadhi's court under the guise of the 1<sup>st</sup> Applicant's mental infirmity so as to gain control of his personal account shortly after he began receiving his pension. They contend that they are apprehensive that if the Respondent deals with the 2<sup>nd</sup> Applicant's pension their appeal will be rendered nugatory.
4. It is the Applicants case that the Respondent will not suffer any prejudice in the event the orders sought for in the Application are granted.
5. The Applicant also filed a further affidavit on 7<sup>th</sup> November 2025 and averred that the 2<sup>nd</sup> Applicant has another family with children who are minors and totally dependent on his small pension for schooling and other needs. To support his statement, the Applicants have annexed birth certificates for Ibrahim (born 2006), Rahma (born 2010), and Sadia (born 2016), along with school newsletters showing outstanding fee balances for Ibrahim and Rahma at Merti Secondary schools.
6. The Applicants argue that the children referred to by the Applicant and said to need maintenance are actually adults, with the youngest being 24 years old, have since married and moved on with their lives. They have provided birth certificates and wedding photos as evidence of this.

#### **The Respondent's case**

7. The Application is opposed by the Respondent through a Replying Affidavit dated 3<sup>rd</sup> November 2025. The Respondent avers that she is the wife of the 2<sup>nd</sup> Appellant and that there are three children of the marriage for whom the court ordered maintenance. She maintains that the 2<sup>nd</sup> Appellant has a constitutional obligation to provide for his children and that granting the stay would be against the best interests of the children, as they would be left without any upkeep.
8. The Application was canvassed by way of written submissions

#### **Applicant's submissions**

9. The Applicants contend that they will suffer significant financial loss as the Kadhi's orders affect the 2<sup>nd</sup> Applicant's pension, which is his sole source of livelihood. They argue that substantial loss is the cornerstone of jurisdiction for granting a stay, as execution would irreparably affect the essential core of the Applicant's ability to survive.
10. It is further submitted that their appeal raises meritorious and triable issues and was filed without unreasonable delay, They also expressed a willingness to provide security for the due performance of the decree as the court may direct.
11. The Respondent did not file any submissions.

#### **Analysis and Determination**

12. I have considered the Application, the grounds cited, the rival affidavits, and the Applicant's submissions.
13. Stay of Execution pending appeal is governed by Order 42, Rule 6 of the Civil Procedure Rules, 2010. The Applicant must satisfy the court that:
  - a) Substantial loss would result unless stay is granted.



- b) The Application for stay has been made without unreasonable delay.
  - c) Security for due performance of the decree must be given by the applicant.
  - d) It is also trite law that the Applicant must also demonstrate that the appeal is arguable.
14. On Substantial loss, the Applicants argue that the pension is the 2<sup>nd</sup> Applicant's only source of income and that its attachment would cause financial ruin and impede the support of his other minor children. The Respondent has not refuted the presence of these other children. I find that the Applicants have demonstrated that execution would create a state of affairs that irreparably affects the essential core of the Applicant's livelihood. Am satisfied that substantial loss has been proved.
15. On whether the Appeal has a high chance of success, it is trite that an arguable appeal is one that is not frivolous, and ought to be argued fully. It is not necessarily one which must succeed. Among the issues raised in the memorandum of Appeal is a complaint that the Hon. Kadhi granted reliefs which the respondent had not sought for, and that some of the children were now Adults and would not require maintenance. I am satisfied that these are meritorious and triable issues that the Applicant ought to be given a chance to ventilate on Appeal.
16. Regarding unreasonable delay, the judgment was delivered on 21<sup>st</sup> August 2025, and this application was filed on 16<sup>th</sup> September 2025. There was no inordinate delay in filing of the Application.
17. The condition of providing security for due performance of the decree is essential. The Applicants have demonstrated a willingness to abide by such terms and conditions as the court deems fit. However, an order for maintenance of children had been made. The allegation that the children referred to, are Adults is the subject of the main Appeal, not the present Application. Consequently in lieu of security, the 2<sup>nd</sup> Applicant will continue to maintain the subject children as ordered by the trial court.
18. In conclusion, the Application succeeds, and I hereby proceed to make the following orders:
- a. THAT the execution of the Judgment of the trial court delivered on 21<sup>st</sup> August 2025 is hereby stayed pending the hearing and determination of the Appeal.
  - b. The 2<sup>nd</sup> Appellant shall continue to provide maintenance to his children with the Respondent at the rate of ksh. 20,000 per month until the Appeal is heard and determined.
  - c. In default of order (b) above, the stay order herein shall automatically lapse and the Respondent will be at liberty to proceed with execution proceedings.
  - d. Each party to meet their own costs.

**DATED, SIGNED AND DELIVERED AT ISIOLO THIS 22<sup>ND</sup> DAY OF JANUARY 2026.**

**S. CHIRCHIR**

**JUDGE.**

In the presence of :

Mr. Jarso for the Applicants

Mr. Abdullahi for the Respondents

