



**Kiharu Bookshop v Longhorn Publishers PLC (Civil Appeal  
E052 of 2025) [2026] KEHC 680 (KLR) (30 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 680 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CIVIL APPEAL E052 OF 2025  
BM MUSYOKI, J  
JANUARY 30, 2026**

**BETWEEN**

**KIHARU BOOKSHOP ..... APPELLANT**

**AND**

**LONGHORN PUBLISHERS PLC ..... RESPONDENT**

*(Being an appeal from the ruling and orders in the Small Claim's Court at Thika (Hon. Sylvia A. Wayodi, Adjudicator/RM) dated 27th February 2025 in claim number E1472 of 2023)*

**RULING**

1. On 5<sup>th</sup> December 2024, the trial court set aside an ex-parte judgement which had been entered against the appellant in the following terms;

That the ex parte judgment entered herein and all consequential orders is hereby set aside on the following terms;

- a. That the applicant shall within 30 days from the date of this ruling, deposit Kshs 250,000 as part of the decretal sum in court until the final determination of the case.
- b. That the applicant shall serve the response and all compliance documents within 14 days from the date of this ruling.
- c. The claimant/respondent shall have thrown away costs of Kshs 15,000 to be paid within 14 days from this date.
- d. In default of compliance with order given (a) (b) and (c) hereinabove, the order vacating the ex parte judgment shall automatically lapse without further



reference to the court, in which case, the respondent herein will be at liberty to proceed with execution.

- e. That the applicant shall pay the auctioneers fees if any the same to be agreed upon failure of which to be taxed in the manner as provided by the law.
2. The appellant did not comply with the terms of the said ruling and by application dated 3<sup>rd</sup> January 2025 he went back to the same court seeking the following two orders;
    - a. That the order requiring the applicant to deposit Kshs 250,000 within thirty days be extended to 6 months or such time the court may deem fit.
    - b. That the costs of the application be provided for.
  3. The lower court disallowed the latter application vide its ruling dated 17<sup>th</sup> February 2025 which precipitated this appeal which sets out five grounds. In the appeal, the appellant filed a notice of motion dated 17<sup>th</sup> March 2025 which has the following prayers.
    - a. Spent.
    - b. Spent.
    - c. The applicant/appellant be allowed to liquidate the first installment due to the respondents in the sum of Kshs 250,000.00 within 6 months from the date of this application.
    - d. The costs of this application be provided for,
  4. It is the above application to which this ruling relates. The respondent has opposed the application through an affidavit of Dennis Kariuki sworn on 1<sup>st</sup> April 2025. The main ground of the application is that the appellant has health challenges and is not able to pay the deposit at once. The respondent opposes the application by arguing that the applicant has not demonstrated his inability to pay the deposit at once. It also submits that the appellant has not demonstrated that he will suffer substantial loss if the application is not allowed.
  5. I have read the submissions of the appellant dated 22<sup>nd</sup> August 2025 and those of the respondent dated 18<sup>th</sup> August 2025. I note from the submissions of both parties as well as the application that the appellant seeks to be allowed to liquidate the deposit ordered by the trial court in installments. The prayers are couched in a way that suggests that the appellant is seeking to liquidate the decretal sum while the ruling being appealed was to the effect that the amount was to be deposited in court. The two are different in that; whereas liquidation of a decretal sum involves payment with no desire to have it returned or reverted to the appellant later in case he is successful, payment of security deposit is meant to a neutral holder be it the court or a third party with the intention of preserving the same pending outcome of an event or further orders of the court.
  6. I also find the submissions by the parties off the mark because they are clearly on an application for stay of execution pending an appeal while the application before me seeks payment of the deposit by installment. I have gone through the memorandum of appeal which seeks to overturn the ruling of the trial court and prays for the following orders;
    - a. The appeal be allowed.
    - b. The period within which the appellant is supposed to liquidate the first tranche of the decretal sum in the sum of Kshs 250,000.00 be extended by a further six months from the date of this appeal.



- c. The costs of this appeal and of the suit in the lower court be borne by the respondent.
7. I find the orders sought in the memorandum of appeal to be similar and substantially the same as those sought in the application. An application which seeks to the same orders as those in the substantive or main appeal is an attempt to prosecute the appeal through a shortcut. If the application is allowed, it will have the effect of allowing the entire appeal. That is a situation which should not be encouraged as it would amount to compromising an order of the trial court without following due process. I resonate with position taken by Honourable Justice W.M. Musyoka in *Osodo v Osodo* [2025] KEHC 19137 (KLR) where held that;

‘The danger with seeking a permanent injunction in the main suit, and then filing an interlocutory application for a temporary injunction order pending the suit, is that the same facts will have to be considered, and the determination, at the interlocutory stage, may be a pointer to what may happen at the main hearing. It is a very thin line.

Indeed, in suits of this nature, where similar prayers are sought in the plaint and in an interlocutory application, the main suit may, obliquely, be disposed of, unintentionally, at the interlocutory stage. Parties ought to be careful, with what they seek at the interlocutory stage, to obviate the possibility or risk of weakening their cases, or having them substantially or finally determined, at that point.’

8. The conclusion which must emanate from the above is that I find the application dated 17<sup>th</sup> March 2025 incompetent and lacking in merits. It is hereby dismissed with costs to the respondent.
9. This matter shall be placed before the presiding Judge for further orders and directions in respect of the appeal on a date to be given after delivery of this ruling.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF JANUARY 2026.**

**B.M. MUSYOKI**

**JUDGE OF THE HIGH COURT.**

Judgment delivered in presence of Mr. Ochieng the respondent and in absence of the appellant.

