

2. The grounds upon which the application is premised are set out in the body of it and supporting affidavit of the Appellant herein, sworn on even date. Aggrieved by the trial court's judgment, the Appellant has filed the instant appeal, which raises serious issues with very high chance of success, and if execution proceeds, she will suffer a huge loss, given the Respondent's inability to refund the decretal sum in the event the appeal succeeds.
3. The Respondent swore a replying affidavit sworn on 17/6/2025 in opposition to the application. She averred that although the decretal sum is a refund of the money she paid to the Appellant, she is capable of refunding it in the event of a successful appeal. The appeal is otherwise frivolous with no chances of success, and the application should be dismissed.
4. The application was canvassed by way of written submissions, which were only filed by counsel for the Appellant.

Determination

5. Order 42 Rule 6 (2) of the Civil Procedure Rules provides as follows;
“No order for stay of execution shall be made under subrule (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; 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.”

6. The application was filed on 28/5/2025, while the impugning judgment was delivered on 19/3/2025. That two-month delay is not so inordinate as to be deemed unreasonable.

7. The cornerstone consideration in every application for stay is substantial loss, and the burden of proof lies on the Applicant, as was held by the Court of Appeal in **Kenya Shell Limited v Benjamin Karuga Kibiru & another [1986] KECA 94 (KLR)** that; ***“It is usually a good rule to see if order XLI rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the Applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the corner stone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore without this evidence it is difficult to see why the Respondents should be kept out of their money.”***

8. The Appellant contends that the Respondent will be unable to refund the decretal sum if her appeal succeeds, which contention is vehemently refuted by the Respondent.

9. A money decree is not, by itself, a sufficient ground for stay of execution. The Applicant must demonstrate that:-
 - a) Substantial loss may result if stay is not granted, such as the inability to recover the money if the appeal succeeds.

- b) The Respondent may be unable to refund the decretal sum; commonly referred to as the Respondent being a “man of straw.”
- c) Security for the due performance of the decree is provided.

10. There is no indication that the decretal sum will be unrecoverable from the Respondent, in the eventuality of a successful appeal.

11. I thus find that the Appellant has failed to establish what substantial loss she stands to suffer if the sought stay of execution is denied.

12. Accordingly, the application dated 27/5/2025 is in want of merit and is hereby dismissed.

DATED AND DELIVERED AT MERU THIS 26TH DAY OF JANUARY, 2026.

S.M. GITHINJI
JUDGE

APPEARANCES:

Mr. Gikunda Kiatha for the Respondent.

Mr. Mutembei for Applicant/Appellant (absent).