



REPUBLIC OF KENYA



**Mramba & another v Wanjiru (Civil Appeal E142 of 2023)
[2026] KEHC 601 (KLR) (29 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 601 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL E142 OF 2023
SM MOHOCHI, J
JANUARY 29, 2026**

BETWEEN

MERCY JOAN MRAMBA 1ST APPELLANT

ANN WAMBUI KIMANI 2ND APPELLANT

AND

LUCY NYAMBURA WANJIRU RESPONDENT

RULING

1. Before this Court is the Appellants'/Applicants' Notice of Motion Application dated 19th July, 2023 seeking the following orders:-
 - i. Spent
 - ii. Spent
 - iii. This Honourable Court be pleased to grant an order of stay of execution of the judgments and/or the decree delivered on 16th June, 2023 and all the consequential orders arising therefrom pending the hearing and determination of this Appeal lodged by the Appellants/Applicants herein vide Nakuru HCCA E142 of 2023 Mercy Joan Mramba and Another vs Lucy Nyambura Wanjiku
 - iv. This Honourable Court be pleased to grant an order for provision of a Bank Guarantee of the entire decretal sum awarded by the trial Court as security pending the hearing and determination of the Appeal lodged vide Nakuru HCCA E142 of 2023 Mercy Joan Mramba and Another vs Lucy Nyambura Wanjiku
 - v. This Honourable Court be pleased to issue any other order as it may deem just appropriate and expedient in the interest of justice



- vi. Costs of this Application be provided for.

Applicants' Case

2. The Application was premised on the grounds on its face and the contemporaneous Supporting Affidavit sworn by Ann Wambui Kimani, Advocate. She avers that the Applicants being aggrieved by the judgment entered in Nakuru CMCC No. 71 of 2020 preferred an appeal against the award on liability and damages.
3. It was the Applicants' case that the Respondent will commence execution proceedings rendering the appeal nugatory. That the Appellants are ready and willing to furnish the Court with a bank guarantee as security for the whole decretal amount .
4. Further that the Appeal raises triable issues on points of law with high chances of success. That the Applicants stand to suffer irreparable loss and damage if the Application is not allowed.
5. Counsel further averred that the Respondent's means of income is unknown and the Applicants are apprehensive that if the decretal amount is paid to the Respondent, she may not be in a position to refund the same in the event the appeal succeeds.
6. That the Respondent stands to suffer no prejudice if the orders sought are issued and that the Application was brought without undue delay.

Respondent's Case

7. The Respondent in opposition, filed a Replying Affidavit sworn on the 25th September, 2023. She averred that the application offends the provisions of Order 42 Rule 6 of the Civil Procedure Rules. She added that she will be prejudiced if the Application is allowed as it is aimed denying her the fruits of her judgments.
8. It was the Respondent's case that the Applicants should release three quarters of the decretal amount to her. That the duration of the security given has lapsed and that the guarantee was defective as it has not been signed by the bank therefore ought to be declined.
9. She deposed that the appeal raises no triable issues and has no chances of success.

Applicants' Submissions

10. The Applicants through their counsel on record the firm of M/s Kimondo Gachoka Advocates on the merits of the Application submitted that, the Application meets the criteria under Order 42, Rule, 6 of the Civil Procedure Rules
11. Counsel in on order to spotlight the substantial loss likely to be suffered cited Nicholas Stephen Okaka & Another v Alfred Waga Wesonga [2022] eKLR where the Court found that
‘the Respondent has not given any material as to his ability to repay the decretal sum in case the appeal succeeds and in light of the depositions by the Applicants’ counsel that they shall suffered substantial loss if stay is not granted. Accordingly, I am persuaded that substantial loss has been proven.’
12. Counsel further cited RWW v EKW [2019] eKLR to emphasize on the need to preserve the case in order to consider the rights of the Applicants of Appeal



Analysis and Determination

13. Having analyzed the Application the affidavits in support and in opposition together with the Applicant's submissions, the sole question that arises for determination is whether the Application is merited.
14. The Court has to confine itself to the issues properly placed before it and determine whether the Applicant has satisfied the legal threshold for the orders sought. The conditions precedent that have to be met for issuance of orders of stay of execution pending appeal are laid down under Order 42 Rule 6(2) of the Civil Procedure Rules which provides:-
 - “(2) 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.”

Delay

15. Judgment was entered in the Trial Court was delivered on 16th June, 2023 both the Application and the Memorandum of Appeal were filed on 21st July, 2023. This was six (6) days outside the statutory period for filing. This delay has not been explained. In the absence of such justification, the Court finds the Application not in compliance with the mandatory timelines.

Substantial Loss.

16. The Court observes that substantial loss must be specific and detailed. The Applicants have asserted that they stand to suffer substantial loss to the tune of Kshs. 324,810,000, which is the judgment award and costs, should the order of stay of execution not be granted. They further contended that the Respondent would be unable to refund the decretal amount should the Appeal be successful owing to the Respondent's uncertain income status.
17. The Court notes that the Respondent on her part has not addressed the issue of not being able to raise the decretal amount. She has instead argued that since the Appeal is just on quantum then she should be allowed to access three quarters of the decretal amount.
18. The principle was well captured in *Kenya Shell Ltd v Benjamin Karuga Kibiru & Another* [1986] KLR 410, where the Court of Appeal held that substantial loss is the cornerstone of granting stay of execution. The Court held that
 - “It is not sufficient by merely stating that the sum of Shs 20,380.00 is a lot of money and the applicant would suffer loss if the money is paid. What sort of loss would this be? In an application of this nature, the applicant should show the damages it would suffer if the order for stay is not granted. By granting a stay would mean that status quo should remain as it were before judgment. What assurance can there be of appeal succeeding? On the other hand, granting the stay would be denying a successful litigant of the fruits of his judgment.”



19. Mere assertions of hardship are insufficient, specific prejudice must be proven. This Court is mindful that execution of a decree is a legal process through which a successful litigant enjoys the fruits of her judgment. That line of argument, of the unknown financial status, is insufficient to justify the halting a legal process or denying a rightful litigant the fruits of her labour.
20. The Applicants have also not demonstrated any real risk of execution. There mere existence of a judgment against the Applicants and the possibility of enforcement of the judgment is not, in itself, a substantial loss. That is a speculative assertion and not a valid basis upon which to deny the Respondent fruits of her judgment.
21. In line with the holding in *Butt v Rent Restriction Tribunal* [1982] KLR 417, this Court must exercise its discretion in a manner that balances the right of appeal with the Respondent's entitlement to enjoy the fruits of her judgment. The risk of execution remaining unsubstantiated and the Applicants have failed to discharge the burden of the substantial loss likely to be suffered.

Security

22. The Applicants are required to submit security for due performance. In *Arun C. Sharma v Ashana Raikundalia T/A Rairundalia & Co. Advocates & 2 others* [2014] eKLR, the Court emphasized that the purpose of security is not to punish the judgment debtor but to safeguard the decree holder in order to ensure the decree is not rendered illusory.
23. The Applicants submitted a bank guarantee dated 18th February, 2022 and which was valid for a one-year duration. Consequently, the same guarantee, would have terminated on or around 18th February, 2023. The present Application having been filed on 19th July, 2023 is no longer valid. Security must be real, valid and enforceable.
24. In the circumstances, the Applicants have failed to satisfy the mandatory requirement of furnishing security for the due performance of the decree.
25. The Court also has noted that the Applicants were issued with temporary stay orders on 24th July, 2023 and further directions on disposal of the Applications.
26. From 18th April, 2024 when the Applicants wrote to Court seeking a Ruling date, the Applicants did not take further steps to move the Court for the determination of their application. The matter was eventually listed on the Courts own motion. On 16th September, 2015 a Notice was duly served upon the parties to attend a mention. There was non-appearance.
27. The Applicants demonstrate lack of diligence in prosecuting their Application and this Court is not inclined to reward indolence. Delay defeats justice
28. Taking all relevant factors into consideration, this Court finds that:-
 - a. The Application dated 19th July, 2023 is found to be devoid of merit and is hereby dismissed.
 - b. The Respondent is awarded costs of this Application

It is so ordered.

SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 29TH DAY OF JANUARY 2026

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Mohochi S. M.

JUDGE.

