



REPUBLIC OF KENYA



**KENYA LAW**  
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**Marangu v Nyaboke (Civil Appeal E205 of 2025)  
[2026] KEHC 389 (KLR) (21 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 389 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL APPEAL E205 OF 2025**

**G MUTAI, J**

**JANUARY 21, 2026**

**BETWEEN**

**LUCY MARANGU ..... APPELLANT**

**AND**

**SUZANNE NYABOKE ..... RESPONDENT**

**RULING**

1. What is before this Court is a Notice of Motion application dated 6<sup>th</sup> November 2025 vide which the applicant seeks an order staying the execution of the judgment of the Hon Gatambia Ndungu delivered on 26<sup>th</sup> June 2025 in Mombasa SCCCOMM No E417 of 2025 and all the consequential orders therein pending the hearing and determination of the appeal filed on 7<sup>th</sup> July 2025.
2. The appellant contends that she has an arguable appeal with high chances of success, that the application was brought without undue delay, and that she is willing to comply with any conditions that the court may give while allowing the application. In support of the application, the applicant attached to the motion her affidavit, sworn on 6th November 2025, to which she annexed the Memorandum of Appeal.
3. The application is opposed. The respondent filed a replying affidavit sworn on 24<sup>th</sup> December 2025 in which she averred that the appeal had no chances of success. She stated that the application was a ploy to delay the matter and to frustrate her enjoyment of the fruits of the lower court's judgment. She further stated that the order sought could not be issued as the appellant hadn't offered to provide security.
4. The respondent, however, stated that if the court was minded to allow the application, it should do so on condition that the entire decretal sum is deposited together with costs and interest as ordered by the Court below.
5. The matter proceeded by way of written submissions.



6. The submissions of the appellant are dated 19<sup>th</sup> January 2026. vide the said submissions, it was urged that the appellant had satisfied the conditions for the grant of a stay pending appeal. Regarding conditions for the grant of stay, counsel urged that under Order 22, Rules 22(1) and 25 of the [Civil Procedure Rules](#), it was not a requirement that security be provided. It was contended that it would be unfair to deny the appellant the opportunity to exercise her undoubted right of appeal merely because she could not raise the security.
7. The respondent, on the other hand, contended that the sole issue for determination by the court was whether the application should be allowed. Through her counsel, she submitted that the appellant had the onus of showing that the conditions set out in Order 42 Rule 6(2) of the [Civil Procedure Rules](#) had been met. The respondent, relying *inter alia* on the decision of the Court in the case of [James Wangalwa & Another v Agnes Naliaka Cheseto](#) [2012] KEHC 1094 (KLR) and [Samvir Trustee Limited v Guardian Bank Limited](#) [2007] KEHC 2438 (KLR), urged the court to dismiss the said application on the ground that the necessary test had not been met.
8. This is an application for a stay pending appeal. Order 42 Rule 6(2) of the [Civil Procedure Rules](#) states that: -
  - “(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.”
9. Based on the said provision, an applicant seeking a stay pending appeal must satisfy the following conditions: -
  - a. Show that she will suffer substantial loss unless a stay is granted;
  - b. Demonstrate that the application was filed without undue delay; and
  - c. Offer security for the due performance of the decree or order that may ultimately be binding on her.
10. The foregoing requirements are conjunctive; they must all be present for the stay order to issue in respect of money decrees. The absence of any one of these conditions is a death knell for an application for stay pending appeal made in respect of a money decree.
11. When considering applications for stay pending appeal, the Court engages in a delicate balancing act between the interest of the respondent, who is desirous of enjoying the fruits of a judgment in her favour, and those of the appellant, who is desirous of ensuring that the appeal is not rendered an academic exercise. The Court of Appeal in [RWW v EKW](#) (2019) eKLR succinctly stated the dilemma in the following manner: -
 

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded, and the appeal, if successful, is not rendered nugatory. However, in doing so, the Court should weigh this right against the success of a litigant who



should not be deprived of the fruits of his/her judgment. The Court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.”

12. Having made the foregoing observation, I must now determine whether the 3 conjunctive conditions have been met. I will look at each of them in turn below.

13. What amounts to substantial loss was defined in the case of *Century Oil Trading Company Ltd v. Kenya Shell Limited*, Nairobi (Milimani) HCMCA No. 1561 of 2007, as being:-

“The word “substantial” cannot mean the ordinary loss to which every judgement debtor is necessarily subjected when he loses his case and is deprived of his property in consequence. That is an element which must occur in every case and since the *Code* expressly prohibits stay of execution as an ordinary rule it is clear the words “substantial loss” must mean something in addition to all different from that...Where execution of a money decree is sought to be stayed, in considering whether the applicant will suffer substantial loss, the financial position of the applicant and that of the respondent become an issue. The court cannot shut its eyes where it appears the possibility is doubtful of the respondent refunding the decretal sum in the event that the applicant is successful in his appeal. The court has to balance the interest of the applicant who is seeking to preserve the status quo pending the hearing of the appeal so that his appeal is not rendered nugatory and the interest of the respondent who is seeking to enjoy the fruits of his judgment.”

14. This is a claim for money. The court below ordered that the appellant pay the sum of Kes165,000 to the respondent. The said amount is substantial. I say so as what can be said to be a “substantial” amount of money depends on the respective abilities of the parties. The respondent has not shown that she will be able to repay the money if the appeal is successful. There is therefore a likelihood that if execution is not stayed and the respondent executes, the same may not be recovered upon appeal. In such an instance, the appellant would suffer a substantial loss.

15. The application was filed within a reasonable time, as the appellant moved this Court soon after her application for stay in the court below was allowed in part, for a limited period. As noted earlier, the appellant expressed a readiness to comply with any conditions the court may impose. That being the case, the second and third conditions have been satisfied.

16. The upshot of the foregoing is that the application has merit. Consequently, I order that the appellant deposit the decretal sum in a joint interest-earning account in the names of both parties' counsel within 30 days of the date hereof. In default execution to issue.

17. Costs shall be in the appeal.

18. It is so ordered.

**DATED AND SIGNED IN MOMBASA, THIS 21<sup>ST</sup> DAY OF JANUARY 2026. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.**

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**GREGORY MUTAI**

**JUDGE**

In the presence of:-

Ms Nabende, holding brief for Mr Wameyo, for the Respondent;



No appearance for the Appellant; and  
Ms Bancy - Court Assistant.

