

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. APPEAL NO. E083 OF 2025**

**U & I MICROFINANCE BANK LIMITED:.....1<sup>ST</sup>**

**APPELLANT**

**LYDIA THOGORI IRUNGU:.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**LILIAN**

**WAIRIMU**

**GACHERU:.....RESPONDENT**

**RULING**

The application is dated 21<sup>st</sup> November 2025 and is brought under Order 42 Rule 6, Order 51 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act seeking the following orders;

1. THAT this application be certified as urgent.
2. THAT the Honourable Court be pleased to stay execution of the Judgment delivered on 7<sup>th</sup> November, 2025 in Kangundo MCELC No. 64 of 2019 pending the hearing and determination of this application.
3. THAT the Honourable Court be pleased to stay execution of the Judgment delivered on 7<sup>th</sup> November, 2025 in Kangundo MCELC No. 64 of 2019 pending the hearing and determination of Appeal filed herein.
4. THAT the costs of this Application be provided for.

It is based on the following grounds that the Applicant/1<sup>st</sup> Appellant is aggrieved by the Judgment delivered on 7<sup>th</sup> November, 2025 and has filed an Appeal to this Court challenging the entire decision. Among the orders made in the said Judgment is cancellation of 2<sup>nd</sup> Applicant's title for Land Donyo Sabuk/Komarock Block 1/3967 and the 1<sup>st</sup> Appellant's registered legal charge on it. That unless the stay of execution pending Appeal is granted the Respondent will proceed to execute the Decree to the loss and detriment of the 1<sup>st</sup> Appellant. That the Appeal raises an arguable appeal with high chance of success. That the Applicant/1<sup>st</sup> Appellant is willing to abide by any conditions imposed by the court. That this application has been made without delay and on timely basis. That the Respondent will not suffer any prejudice should the Order of stay of execution of the said Judgment is granted. That the Appeal will be rendered nugatory should orders for stay of execution not be issued.

I have considered the application and the supporting affidavit therein. The application was served on the Respondent and it is not opposed. The principles for granting stay of execution are provided for under Order 42 rule 6 (1) of the Civil Procedure Rules as follows;

*“No appeal or a second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the Court appealed from may order, but the Court appealed from may for sufficient cause order stay of execution of such decree or order and whether*

*the application for such stay shall have been granted or refused by the Court appealed from, the Court to which such appeal is preferred, shall be at liberty, on an application being made, to consider such application and to make such orders thereon as may to it seem just, any person aggrieved by an order of stay made by the Court from whose decision the appeal is preferred may apply to the appellate Court to have the orders set aside.”*

Order 42, rule 6 states:

*“No order for stay of execution shall be made under sub-rule (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.”*

The appellants need to satisfy the Court on the following conditions before they can be granted the stay orders:

1. Substantial loss may result to the applicant unless the order is made.
2. The application has been made without unreasonable delay, and

3. Such security as the Court orders for the due performance of the decree or order as may ultimately be binding on the applicant has been given by the applicant.

The principles governing the exercise of the court's jurisdiction are now well settled. Firstly, the intended appeal should not be frivolous or put another way, the applicant must show that they have an arguable appeal and second, this Court should ensure that the appeal, if successful, should not be rendered nugatory. These principles were well stated in the case of Reliance Bank Ltd (In Liquidation) vs Norlake Investments Ltd – Civil Appl. No. Nai. 93/02 (UR), thus;

*“Hitherto, this Court has consistently maintained that for an application under rule 5(2) (b) to succeed, the applicant must satisfy the court on two matters, namely:-*

- 1. That the appeal or intended appeal is an arguable one, that is, that it is not a frivolous appeal,*
- 2. That if an order of stay or injunction, as the case may be, is not granted, the appeal, or the intended appeal, were it to succeed, would have been rendered nugatory by the refusal to grant the stay or the injunction.”*

The question of stay pending appeal has been canvassed at length in various authorities, such as in the Court of Appeal decision in Chris Munga N. Bichange

vs Richard Nyagaka Tongi & 2 Others eKLR where the Learned Judges stated the principles to be applied in considering an application for stay of execution as thus;

*“..... The law as regards applications for stay of execution, stay of proceedings or injunction is now well settled. The applicant who would succeed upon such an application must persuade the court on two limbs, which are first, that his appeal or intended appeal is arguable, that is to say it is not frivolous. Secondly, that if the application is not granted, the success of the appeal, were it to succeed, would be rendered nugatory. These two limbs must both be demonstrated and it would not be enough that only one is demonstrated.....”*

In the case of Mohamed Salim T/A Choice Butchery vs Nasserpuria Memon Jamat (2013) eKLR, the court stated that;

*“That right of appeal must be balanced against an equally weighty right, that of the plaintiff to enjoy the fruits of the judgment delivered in his favour. There must be a just cause for depriving the plaintiff of that right .....*”

We are further guided by the court’s decision in Carter & Sons Ltd vs Deposit Protection Fund Board & 2 Others Civil Appeal No. 291 of 1997, at Page 4 as follows:

*“ . . . the mere fact that there are strong grounds of appeal would not, in itself, justify an order for stay. . .the applicant must establish a sufficient cause; secondly the court must be satisfied that substantial loss would ensue from a refusal to grant a stay; and thirdly the applicant must furnish security, and the application must, of course, be made without unreasonable delay.”*

I find that the applicant is not guilty of laches as judgement was delivered on 7<sup>th</sup> November 2025 and this application is dated 21<sup>st</sup> November 2025. The 1<sup>st</sup> Appellant/Applicant stated that the rendered Judgment directed the cancellation of 2<sup>nd</sup> Applicant’s title for Land Donyo Sabuk/Komarock Block 1/3967 and the 1<sup>st</sup> Appellant’s registered legal charge on it. That unless the stay of execution pending Appeal is granted the Respondent will proceed to execute the Decree to the loss and detriment of the 1<sup>st</sup> Appellant/Applicant. The application was not opposed. I find that the grounds of appeal raised in the application do raise an arguable appeal and I find that if the application is not granted, the success of the appeal, were it to succeed, would be rendered nugatory. I find that the Applicant has fulfilled the above grounds mentioned to enable me grant the stay. I find that the application is merited and I grant it as prayed. Costs to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 29<sup>TH</sup> DAY OF  
JANUARY 2026.**

**N.A. MATHEKA**

**JUDGE**

ORIGINAL