

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CIVIL APPEAL NO.E036 OF 2025

HUNNINGTON MATERE

MATANDA.....APPELLANT/APPLICANT

VERSUS

VICTOR MUCHOLI BIKETI.....

.....RESPONDENT

RULING

1. Hannington Matere Matanda, the applicant/appellant herein has moved this court vide an application dated 24/7/25 for the following orders;

i) Spent

ii) That pending the hearing of this application and determination of the Appeal there be stay of execution of the judgment and decree issued in Kitale CMCC No.E314/2022 by way of arrest and commitment of the appellant to civil jail.

iii) That in view of the existing moratorium declared by the Statutory Manager

Invesco which cushions the appellant from further liability this court dispenses with the requirement of deposit of security as a requirement for granting stay.

iv) Any other order deemed fit.

v) Costs.

2. The applicant has listed the following grounds in his application;

(a) That he filed an application in the lower court to set aside the entire execution process.

(b) That the trial court dismissed his application.

(c) That it is necessary to stay execution as the applicant risks being committed to civil jail.

3. The applicant has supported the grounds with an affidavit sworn on 24/7/2025 where he avers that he already served civil jail for 30 days and was released temporarily by the trial court.

4. That if he is re-arrested and committed for further jail term, he stands to suffer irreparable loss and the purpose of the appeal will be defeated.

5. That prior to going under, his insurers had partly paid the respondent.

6. That his application for stay is made in good faith and pursuant to section 67 (C) (11) of the Insurance Act as Amended pursuant and to section 5(C) of the Insurance

(Amendment) Act 2019. He prays that the condition for stay which requires a deposit of security be dispensed with.

7. In his written submissions dated 24/10/25, the appellant submits that he has already filed an appeal and execution process against him has begun. He contends that he has an arguable appeal which should be given a chance to be determined.
8. He maintains that the impending jail term will make him suffer substantial loss. He further submits that he brought this application timeously and should be given a relief adding that the respondent would suffer no prejudice.
9. The respondent through his replying affidavit has opposed this application. He contends that the applicant sought no leave to appeal against the ruling delivered on 3/7/25 which in his view renders the appeal incompetent.
10. He further contends that the appeal is against a negative order which cannot be stayed.
11. That the declaration of extension of moratorium and public notice exhibited by the applicant are not certified court orders which a court of law can act or take judicial notice of the same. He further adds that the moratorium relates to claims by policy holders and creditors of the insurer and it does not mean an automatic stay of execution or does not provide a shield to the policy holder against liabilities to 3rd parties arising from contract or tort.

12. He further avers that section 67 (C) (11) only protects the applicant if there was a declaratory judgment.
13. He avers that the insurance company is not a party to the suit herein and stands to suffer prejudice if stay is granted because he will be prevented from enjoying the fruits of his judgment.
- 14.** He submits through counsel that the appeal is against a negative order and refusal to set aside the execution process. That a negative order is incapable of execution and relies on the case of **Kanwal Sarjit Dhiman -vs- Keshavji Jivraj Shah (2008)** and **Raymond .M. Omboga -vs- Austine Pyan Maranga (Kisii HCCA No.15 of 2010)**.
15. The respondent questions whether the provisions of section 67 C (10) of the Insurance Act protects an insured person from paying compensation for negligence against 3rd parties. According to the respondent the decretal sum in Kitale CMCC NO.E314 of 2022 is not covered by moratorium. He relies on the decision of **Maitima -vs- Muchui (2024) KEHC 696 (KLR)** and **Wycliffe Otieno Onyango -vs- Statutory Manager Blue Shield Insurance Co Ltd & 2 Others (2021)eKLR** where the courts held that the moratorium does not bar 3rd parties from executing a decree against a tortfeasor.
16. On the question of conditions for stay the respondent submits that Order 42 Rule 6(2) a court can only grant stay

if substantial loss is proved and where security for due performance of the decree is given.

17. He submits that the applicant has not established that any substantial loss would result unless stay is granted and that no offer of security has been made.
18. This court has considered this application and the grounds raised. I have also considered the response.
19. This is an application for stay of execution pending determination of appeal filed herein. The applicant has in substance invoked the powers of this court under the provisions of Order 42 Rule 6 Civil Procedure Rules which provide as follows;

“(1) No appeal or 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 application being made, to consider such application and to make such order thereon as may to it seem just, and 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 such order set aside. (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.”

20. The above provisions clearly show that a court should not treat or assume an appeal to automatically operate as a stay. An appellant must show good or sufficient cause. This means an appellant is required to show that the appeal filed is arguable and not frivolous only aimed at delaying the cause of justice and the attendant fruits of litigation. Under Sub rule (2) the provisions are even more apt. It provides guidelines of granting stay. One of the conditions is that an applicant must demonstrate that substantial loss not just loss would be suffered unless stay is granted. The other condition is that an application must be made timely and that security is an imperative for due performance of the decree. The rationale is simple. In the event of unsuccessful appeal, the appellant would ultimately be required to satisfy the decree and if successful, he gets back his money.

21. Now let me begin with the first condition of the requirement of demonstrating good or sufficient cause. The appellant contends that he has an arguable appeal and has given basis for that including the significance of the provisions of section 67 (11) of the Insurance Act and

declaration of moratorium. The respondent on the other hand opines that the appeal has no chance because according to him, the same is incompetent for want of leave and that declaration of moratorium cannot shield the applicant from execution proceedings.

22. This court finds that it is a bit premature at this stage to determine the competence of the appeal because the respondent did not raise the issue as a preliminary point. The issue of competence of the appeal shall therefore be canvassed at a later stage.

23. In the same breadth, I also find that the issue of moratorium and the import of section 67 C and 67 (C) (10) as amended is one of the grounds raised in of the appeal herein. Inviting the court to determine it one way or the other is premature at this interlocutory stage.

24. What is important at this stage is to determine on a prima facie basis whether the grounds raised are arguable not whether the grounds have merit. This court is satisfied that the grounds raised by the appellant in the appeal are arguable and hence I find that he has established a good or sufficient cause as provided under Order 42 Rule 6(1) of Civil Procedure Rules.

25. On the question of substantial loss, the applicant apart from stating that he is likely to be committed to civil jail, he really has not stated how a substantial loss will be

occasioned if he pays the decretal sum rather than being committed to civil jail.

26. This court finds that the respondent has raised a legitimate issue of being delayed from enjoying the fruits of judgment.

27. This court balancing the scales of justice between preserving the substratum of the appeal and being fair to the respondent, it is fair and just that a stay of execution is granted but on condition that half decretal sum is paid to the respondent while the other half be deposited in a joint account in the names of both counsels on record or in the alternative in court. This court takes the position that a declaration of moratorium does not displace the conditions set under Order 42 Rule 6(2) of the Civil Procedure Rules.

I will give the appellant/applicant 21 days to comply with the conditions set and in default execution to issue. In the meantime I direct the appellant to process his appeal by filing the record of appeal and serving it within 30 days. A mention date for directions in that regard will be taken upon delivery of this ruling. Costs shall be in the appeal.

DELIVERED, DATED and SIGNED at KITALE this3rd day ofFEBRUARY....., 2026.

HON JUSTICE R.K. LIMO
KITALE HIGH COURT

Ruling delivered in open court

***In the presence of
M/s Chepkwony for respondent
Wanyonyi for applicant
Duke/Chemosop- Court assistants***