

**IN THE COURT OF  
APPEAL AT NAIROBI**

**(CORAM: GATEMBU, MUMBI NGUGI & NYAMWEYA,  
J.J.A.)**

**CIVIL APPLICATION NO. E229 OF 2025**

**BETWEEN**

**JOEL KIMUTAI BOSEK.....APPLICANT**

**AND**

**FELIX LIMO SINGO'EI.....RESPONDENT**

*(An application for stay of execution pending the hearing and determination of an intended appeal against the Judgment and Decree of the High Court of Kenya at Nairobi (B.M. Musyoki, J.) dated 14<sup>th</sup> March 2025*

***in***

***HCCC No. E290 of 2024)***

**\*\*\*\*\***

**RULING OF THE COURT**

1. Felix Limo Sing'oei, the respondent, filed suit by way of an Originating Summons (O.S.) before the High Court at Nairobi against Joel Kimutai Bosek, the applicant. The object of the suit was to enforce a Settlement Agreement between them made on 27<sup>th</sup> March 2024. On the face of that Settlement

# Agreement

(which was exhibited), the parties “elected to rescind” a contract of sale dated 29<sup>th</sup> July 2020 in respect of two properties known as LR No. 13544/2 and IR No. 82726. In that agreement, the applicant acknowledged having received Kshs.24,000,000.00 from the respondent and undertook to repay that amount by two instalments. The first instalment of Kshs.13,500,000.00 was payable on 15<sup>th</sup> April 2024 and the second installment was payable not later than 15<sup>th</sup> July 2024.

2. The applicant resisted the respondent’s suit on grounds that jurisdiction over the matter lay with the Environment and Land Court and not the High Court; that the procedure of Originating Summons was inappropriate in the circumstances of the case because complex and protracted issues were involved; and that the applicant executed the Settlement Agreement under duress/undue influence.
3. Having found that the High Court was properly seized of the matter as the suit arose from a contract (the Settlement Agreement) for refund of money received by the applicant; and

having found the claims by the applicant, an advocate of many years standing, that he signed the Settlement Agreement under duress were baseless, the learned Judge entered judgment for the respondent for Kshs.24,000,000.00 as prayed in the O.S. That judgment was delivered on 14<sup>th</sup> March 2025.

4. Dissatisfied with the judgment, the applicant lodged a Notice of Appeal dated 17<sup>th</sup> March 2025. Thereafter, the applicant filed an application dated 23<sup>rd</sup> May 2025 (the subject of this ruling) seeking an order to stay execution of the judgment delivered on 14<sup>th</sup> March 2025.
5. We heard the application on 27<sup>th</sup> August 2025. Learned counsel, **Mr. Moses Kurgat**, appeared for the applicant while learned counsel, **Mr. M. Wanyama**, appeared for the respondent.
6. We have duly considered the application, the affidavits in support and in opposition, the supplementary and further affidavits, as well as the rival written and oral submissions.

7. The principles that guide the Court in applications of this nature are well known. See **Stanley Kangethe Kinyanjui vs. Tony Ketter & 5 Others [2013] KECA 378 (KLR)**. The applicant is required to demonstrate that the appeal or intended appeal is arguable and that if it eventually succeeds, it would be rendered nugatory without a stay having been given.
8. The applicant contends that the intended appeal is arguable. The grounds set out in the memorandum of appeal include complaints that the High Court wrongly assumed jurisdiction over a matter that should have been before the Environment and Land Court; that the Judge failed to appreciate that the cause of action had not accrued; and that the Judge unilaterally re-wrote the contract between the parties. Bearing in mind that an arguable appeal is not one that will necessarily succeed, we think that the intended appeal is arguable.
9. Whether the appeal or intended appeal will be rendered nugatory, depends on whether what is sought to be stayed, if

allowed to happen, is reversible. In that regard the applicant

states that the execution process is underway and proclamations with respect to his vehicles issued and that no prejudice will be occasioned to the respondent if the order of stay of execution is granted.

10. On his part, the respondent asserts that he is entitled to the fruits of the judgment and that if the appeal eventually succeeds, he is “a person of substance and means” and is financially able to refund the amount in question. That financial ability, he says, is demonstrated by the fact that he was able to pay the Kshs.24,000,000.00 the subject of the dispute to the applicant in the first place; and that he is a leading importer and seller in Kenya of vehicles and owner of leading car yards and would have no difficulty in refunding the judgment amount in the unlikely event the appeal succeeds.

11. Although the applicant claimed that the respondent would not be able to refund the judgment amount, the respondent has, in our view, demonstrated his ability to do so in the event the appeal succeeds. In the result, the applicant has not

demonstrated that the appeal will be rendered nugatory should the Court decline to grant the orders sought.

12. Consequently, the application fails. It is dismissed with costs to the respondent.

**Dated and delivered at Nairobi this 13<sup>th</sup> day of February 2026.**

**S. GATEMBU KAIRU, FCI Arb, C.Arb.**

.....  
**JUDGE OF**

**APPEAL MUMBI**

**NGUGI**

.....  
**JUDGE OF APPEAL**

**P. NYAMWEYA**

.....  
**JUDGE OF APPEAL**

*I certify that this is  
a true copy of the  
original.*

*Signed*

**DEPUTY REGISTRAR**