



REPUBLIC OF KENYA



**Corner Holiday Inn & 2 others v Wangunyu & another (Civil Suit 104 of 2007)
[2026] KEHC 1495 (KLR) (Commercial & Admiralty) (12 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1495 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND ADMIRALTY
CIVIL SUIT 104 OF 2007
PM MULWA, J
FEBRUARY 12, 2026**

BETWEEN

**CORNER HOLIDAY INN 1ST PLAINTIFF
PETER KIMEMIA NJOROGE 2ND PLAINTIFF
JOSEPH MURIUKI GITAU 3RD PLAINTIFF**

AND

**ANDREW KURIA WANGUNYU 1ST DEFENDANT
DAVID CURURU WANGUNYU 2ND DEFENDANT**

RULING

Introduction

1. This ruling relates to the Defendants'/Applicants' Notice of Motion dated 16th September 2024, brought under Order 42 Rule 6 of the Civil Procedure Rules, Sections 3A and 63 of the [Civil Procedure Act](#), Article 159 of [the Constitution](#), and all enabling provisions of law. The Applicants seek an order of stay of execution of the Judgment and Decree delivered on 20th August 2024 pending the hearing and determination of the intended appeal.
2. The application is premised on the grounds that the Applicants are aggrieved by the judgment of the Court and have lodged a Notice of Appeal, that the intended appeal is arguable and has high chances of success, and that unless stay is granted, the Respondents are likely to proceed with execution, thereby exposing the Applicants to enormous financial loss and substantial hardship. It is further contended that the 1st Plaintiff, Corner Holiday Inn Limited, ceased to exist as a going concern over fifteen years ago, while the 2nd and 3rd Plaintiffs are persons of advanced age whose financial means are unknown,



thus raising apprehension that any decretal sum paid out may not be recoverable should the appeal succeed.

3. The Application is supported by the Affidavit of David Cururu Wangunyu sworn on 16th September 2024 and a Supplementary Affidavit sworn on 16th May 2025, in which the Applicants depone that the decretal sum is substantial, that execution would render the appeal nugatory, and that they are willing to abide by such conditions on security as the Court may impose.
4. The Respondents oppose the Application through the Replying Affidavit of Peter Kimemia Njoroge sworn on 27th March 2025. He contends that the Application is unmerited, arguing that the judgment delivered on 20th August 2024 conclusively determined the dispute after protracted litigation spanning over two decades, that the Applicants have failed to demonstrate substantial loss as required under Order 42 Rule 6 of the Civil Procedure Rules, and that the intended appeal merely seeks to re-litigate issues already determined by the Court. He further avers that the Applicants cannot introduce new evidence on appeal, that the Respondents are entitled to enjoy the fruits of their judgment, that execution would not render the appeal nugatory, and that the Applicants have neither offered nor demonstrated willingness to provide security for the due performance of the decree.

Analysis and determination

5. Having considered the pleadings, affidavits, and rival submissions, the sole issue for determination is whether the Applicants have satisfied the threshold for the grant of stay of execution pending appeal.
6. The legal principles governing stay of execution pending appeal are well settled. Order 42 Rule 6(2) of the Civil Procedure Rules provides that no order for stay shall issue unless the Court is satisfied that:
 - (a) substantial loss may result to the applicant unless the order is made;
 - (b) the application has been made without unreasonable delay; and
 - (c) such security as the court orders for the due performance of the decree has been given.
7. The cornerstone of an application for stay is substantial loss. The Applicants contend that execution of a decree whose decretal value, upon computation, exceeds Kshs. 30 million would occasion irreparable financial ruin, particularly given the advanced age of the parties and the alleged inability of the Respondents to refund the decretal sum if the appeal succeeds.
8. The Respondents argue that they are entitled to enjoy the fruits of their judgment and that the Applicants have not demonstrated, through evidence, that they would be unable to recover the monies paid.
9. The law on this issue is settled. In *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] eKLR, the Court held:

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself does not amount to substantial loss... Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”



10. Further, in *Samvir Trustee Limited v Guardian Bank Limited* [2007] eKLR, Warsame J. (as he then was) stated that:

“The Court must balance the interests of the parties so that the right of appeal is not rendered illusory while at the same time ensuring that a successful litigant is not deprived of the fruits of his judgment.”

11. In the present matter, the decretal sum is substantial, the appeal raises serious questions touching on corporate governance, fiduciary duties, and valuation, and the Respondents have not demonstrated their ability to refund the decretal amount if the appeal succeeds. I am persuaded that substantial loss has been sufficiently demonstrated.

12. On the issue of delay, the record shows the impugned judgment was delivered on 20th August 2024, while the instant application was filed on 16th September 2024. In my view, this period does not amount to unreasonable delay. This finding aligns with the holding in *Machira t/a Machira & Co. Advocates v East African Standard (No. 2)* [2002] KLR 63, where the Court emphasized that delay must be evaluated contextually.

13. The Applicants have expressed willingness to abide by any conditions on security imposed by the Court. The Respondents propose that the entire decretal sum be deposited in a joint interest-earning account.

14. Security is meant to guarantee the due performance of the decree and is not intended to punish the judgment debtor. See *Focin Motorcycle Co. Ltd v Ann Wambui Wangui & Another* [2018] eKLR.

15. Balancing the competing interests, and guided by proportionality and the overriding objective, I find it just to order partial security, so as not to stifle the appeal while safeguarding the Respondents’ interests.

16. In the result, the Notice of Motion dated 16th September 2024 is merited and is allowed on the following terms:

- i. There shall be a stay of execution of the Judgment and Decree delivered on 20th August 2024 pending the hearing and determination of the intended appeal.
- ii. The Applicants shall, within 45 days, deposit half of the decretal sum in a joint interest-earning account in the names of the advocates for the parties.
- iii. In default of compliance with Order (ii), the stay hereby granted shall automatically lapse.
- iv. Costs of the Application shall abide the outcome of the appeal.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 12TH DAY OF FEBRUARY 2026.

P.M MULWA

JUDGE

In the presence of:

Ms. Mwanza h/b for Ms. Koech for Plaintiff/Respondent

Ms. Mbugua h/b for Mr. Mbigi for Defendant/Applicant

Court Assistant: Carlos

