

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL NO. E294 OF 2025

ELDORET EXPRESS.....1ST
APPELLANT

DAVID SIGEI.....2ND
APPELLANT

VERSUS

WALTER OKUNE NANDWA.....
RESPONDENT

Coram: Before Justice R. Nyakundi
Jeruto & Co Advocates
J.M Kimani & Co. Advocates

RULING

1. Before this court is an application dated 15th day of December 2025, the Applicant seeking the following orders:
 - a. *Spent.*
 - b. *Spent.*
 - c. *There be stay of execution of the judgment/decreed delivered on and dated 5th November, 2025 together with the consequential orders thereto pending hearing and determination of the Appeal arising from this matter.*
 - d. *Costs of this application be provided for.*
2. Which application is based on the grounds that:-
 - a. *The Honourable Court delivered judgment on the 5th November, 2025 in favour of the Respondent against the Appellants/Applicants.*
 - b. *The Appellants/Applicants being aggrieved by the said judgment have already preferred an Appeal in the High Court of Kenya at Eldoret being Eldoret High Court Civil Appeal No. E294 of 2025.*
 - c. *This application is made in utmost good faith and without undue delay.*

- d. *Unless stay is granted the Appeal will be rendered nugatory and the Appellants/Applicant will suffer substantial loss and/or irreparable injury.*
 - e. *The appellants/Applicant are willing to deposit either title deed or logbook whose value is equivalent to the decretal sum herein this is due to the fact that the motor vehicle in question was insured by Blue Shield Insurance Company Limited which has been place under statutory management.*
 - f. *The Appellants/Applicants have overwhelming chances of success in the Appeal and it is therefore only fair and just that the orders sought herein are granted.*
 - g. *The Respondent will not be prejudiced in any way and it is only just, fair and expedient that this application is allowed.*
3. The application is supported by an affidavit of the Applicant deposed as follows:
- a. *That I am one of the Directors of Eldoret Express Company Limited and therefore competent to swear this affidavit. on behalf of Company*
 - b. *That I am the Appellants/Applicants in this suit therefore conversant with the matter.*
 - c. *That I am the owner of motor vehicle registration number KAR 120P that was involved in an accident 11th November, 2006 where the Plaintiff/Respondent suffered injuries which gave rise to the instant suit.*
 - d. *That this suit was heard on diverse dates and the judgment was delivered on dated 5th November, 2025.*
 - e. *That being dissatisfied and/or aggrieved with the judgement, I did file an Appeal against the said judgment in Eldoret High Court Civil Appeal No. E294 of 2025.*
 - f. *That I am informed by my Advocates on record which information I verily believe to be true that the Appeal raises serious issues of points of law and fact which may result in the setting aside of the said judgment.*

- g. That I am also informed by my Advocates on record which information I verily believe to be true that the Appeal has overwhelming chances of success.*
- h. That this Application is made in utmost good faith, timely and without undue delay.*
- i. That in view of pending appeal, stay of execution needs to be applied for as it is not automatic upon filing the appeal.*
- j. That we are willing to deposit a logbook for one of the vehicles/Title deed with a value of more than Kshs. 3,000,000/= as security.*
- k. That motor vehicle registration number KAR 120P was insured by Blue Shield Insurance Company Limited which Company has been put in a receivership and therefore not capable of depositing the decretal sum and that is why am requesting the court to allow us to deposit original motor vehicle for one of the vehicles.*
- l. That we applied for stay of execution pending appeal in the lower court and the same was declined by court.*
- m. That unless stay is granted the Appeal will be rendered nugatory and Appellants/Applicants will suffer substantial loss and/or irreparable injury since the Respondent will have already commenced with execution and will thereby defeat the whole essence of the appeal.*
- n. That the Respondent will not be prejudiced in any way if the application is allowed and it is only just, fair and expedient that stay of execution be ordered pending hearing and determination of appeal.*
- o. That on the other hand, I will be prejudiced as the Respondent is a person of straw hence she will be unable to refund the decretal sum in the event the Appeal succeeds.*

4. Replying affidavit

- a. That I am a male adult compos mentis and the Respondent herein hence competent to swear this Affidavit.*
- b. That I have read, understood and where necessary had explained to me by my Advocates on record the contents of the Appellants'/Applicants'*

Application dated 15th December 2025 together with the Supporting Affidavit sworn by JOSEPH NG'ANGA and the annexures thereto and wish to respond as hereunder.

- c. That I have been informed by my Advocates on record which information I verily believe to be true that judgment in the primary suit was delivered on 5th November 2025 in my favour as against the Appellants/Applicants for the sum of Ksh.2.506.550/= plus costs and interest.*
- d. That I have further been advised by my Advocates on record whose advice I verily believe to be true that this Application is an abuse of the court process and violates the sub judice principle, as the Appellants/Applicants have admitted in paragraph 12 of the Supporting Affidavit to having filed a similar application for stay of execution in the lower court, which was declined, only to now forum-shop by filing an identical application in this Appellate Court without disclosing the full circumstances of the lower court's refusal, thereby undermining the authority of the lower court and convoluting proceedings on the same issue.*
- e. That I have further been advised by my Advocates on record whose advice I verily believe to be true that the ex parte interim stay order issued on 16th December 2025 ought to be discharged forthwith, as it was procured through material non-disclosure by the Appellants/Applicants, who failed to fully inform this Honourable Court of the pending or recently declined application dated 4th December 2025 in the lower court (which is set for directions on 28th January 2026), and such conduct amounts to forum shopping designed to evade the lower court's decision and prejudice my right to enforce the judgment.*
- f. That I have further been advised by my Advocates on record whose advice I verily believe to be true that the Appellants/Applicants have perjured themselves and misled this Honourable Court by falsely stating in the Certificate of Urgency and paragraph 13 of the Supporting Affidavit that I have commenced the execution process, whereas no such execution has been initiated, and no evidence whatsoever has been*

provided to support this baseless allegation, rendering the Application defective and unworthy of the Court's discretion.

- g. That I have further been advised by my Advocates on record whose advice I verily believe to be true that the Appellants/Applicants have not satisfied the conditions set out in Order 42 Rule 6 of the Civil Procedure Rules to warrant a stay of execution pending appeal, as they have not demonstrated with empirical or documentary evidence what substantial loss they will suffer if the order is not granted; mere assertions of substantial loss or irreparable injury, as in paragraphs 13 and d) of the grounds, are insufficient without proof.*
- h. That I have further been advised by my Advocates on record whose advice I verily believe to be true that the deponent of the Supporting Affidavit, Joseph Ng'anga, alleges to be the owner of the subject motor vehicle KAR 120P but has not availed any proof such as a logbook or other ownership documents, and his claim fails as he remains a mere busybody without locus standi to swear on behalf of the named Appellants/Applicants, especially the 2nd Appellant for whom no authority, board resolution, or power of attorney is annexed, further defecting the Application.*
- i. That I have further been advised by my Advocates on record whose advice I verily believe to be true that the proposal to deposit a logbook or title deed as security, as stated in paragraphs 10 and e) of the grounds, is not contemplated under Order 42 Rule 6(2) of the Civil Procedure Rules, which requires sufficient security for the due performance of the decree; instead, the Appellants/Applicants should deposit the entire decretal sum in a joint interest-earning account in the names of both counsel to ensure liquidity and ease of access if the appeal fails.*
- j. That I have further been advised by my Advocates on record whose advice I verily believe to be true that the averment regarding Blue Shield Insurance Company Limited being under statutory management or receivership, as in paragraph 11 of the Supporting Affidavit, is otiose and*

does not constitute sufficient cause for stay; courts have consistently held in a plethora of case law that an insurer's insolvency or liquidation does not absolve the insured from satisfying the decree, and the insured can pay the decretal sum and pursue recovery from the receiver or liquidator. Moreover, depositing a logbook in lieu of the decretal sum is unknown to law and fails to meet the threshold for adequate security.

- k. That I have further been advised by my Advocates on record whose advice I verily believe to be true that I will be prejudiced if the provisions of Order 42 Rule 6 are not strictly adhered to, including the deposit of the entire decretal sum, as failure to do so would indefinitely deny me the fruits of my judgment after a protracted trial.*
- l. That I have further been advised by my Advocates on record whose advice I verily believe to be true that the allegations that I am a "person of straw" and unable to refund the decretal sum, as in paragraph 15 of the Supporting Affidavit, are otiose and based on mere apprehension without any evidential basis; courts have held that such unsubstantiated claims do not warrant stay, requiring concrete proof of inability to refund, which is absent here. Notably, the deponent erroneously refers to me as "she," further highlighting the careless and unreliable nature of the Affidavit.*
- m. That I have further been advised by my Advocates on record whose advice I verily believe to be true that the appeal does not have overwhelming chances of success as claimed in paragraphs 7 and f) of the grounds; the Memorandum of Appeal raises weak grounds, such as failure to prove the case on a balance of probabilities and excessive damages, which ignore the uncontroverted evidence adduced at trial, including my testimony (PW2), the police abstract (PW3), and medical reports justifying the award of Ksh.2,500,000/= for severe injuries like head injury with loss of consciousness, depressed skull fracture, hip dislocation, and multiple leg fractures. The appeal is frivolous and merely intended to delay execution.*

- n. *That I have further been advised by my Advocates on record whose advice I verily believe to be true that the deponent has no demonstrated authority to swear the Affidavit on behalf of the 1st Appellant (a company) beyond a bare assertion of being a director, with no board resolution annexed, and absolutely no authority for the 2nd Appellant, rendering the Application fatally defective.*
- o. *That I have further been advised by my Advocates on record whose advice I verily believe to be true that following the conclusion of the primary suit and the refusal of stay in the lower court, I have the right to enforce the judgment, and granting this Application would only delay execution and deny me the fruits of judgment, amounting to justice delayed and denied.*
- p. *That I have further been advised by my Advocates on record whose advice I verily believe to be true that the Application is not made without undue delay as claimed; the judgment was delivered on 5th November 2025, yet this Application was filed on 15th December 2025, after the lower court decline, showing dilatory conduct hence rendering the Appellant/Applicant guilty of laches.*
- q. *That I swear this Affidavit in total opposition to the Appellants'/Applicants' Application dated 15th December 2025 and urge this Honourable Court to dismiss it with costs as it is bereft of merit, otiose, vexatious, and an abuse of the court process.*
5. Learned Counsel Mr. Kimani for the Applicant in support of the application relied on his written submissions 2nd of January 2026. He placed reliance on the decision of staying execution pending appeal under Order 42 (6) Rule 2 which emphasizes that mere filing of an appeal does not stay execution, instead the Court must find substantial loss to the Applicant if execution succeeds and application must be made without unreasonable delay. See also **Butt vs Rent Restriction Tribunal [1982] KLR 417** and **National Industrial Credit Bank Ltd vs Aquinas Francis Wasike & Another (2006) eKLR.**
6. Key Court precedents and principles on staying of execution:

- a. **Substantial loss and security:** Under Order 42 Rule 6 of the CPR a stay is not granted unless the applicant proves they will suffer substantial loss if the decree is executed, and security is provided for the due performance of the decree.
 - b. **Balance of convenience:** Courts including the High Court weigh the balance of convenience, ensuring the decree-holder is not unfairly delayed while protecting the judgment-debtor from irreparable injury.
 - c. **Execution pendency:** a stay of execution can only be granted if an execution proceeding is actually pending against the judgment-debtor.
 - d. **Conditions:** the courts have clarified that an appellate court may stay execution, but often requires the deposit of the decretal amount of security, particularly in money decrees.
7. In the case of **James Wangalwa & Another v. Agnes Naliaka Cheseto [2012] eKLR**, the Court considered the elements of substantial loss when it held as follows:

“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. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”

8. In view of the foregoing and placing reliance on the affidavits placed before this court and principles in case law I hereby exercise discretion to grant stay of execution pending an appeal to be filed by the Applicant. That the record of the appeal be prepared by the Applicant for purposes

of canvassing the appeal within 30 days from today's ruling. That in the interim period the Applicant do deposit security for costs Kshs 500,000/= in a joint earning interest account of both advocates pending the hearing and determination of the appeal. A status conference be held on 30th of March 2026 to monitor compliance.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 5TH DAY
FEBRUARY, 2026**

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R. NYAKUNDI
JUDGE