



**Hatangimbabazi v Muvandimwe (Family Appeal 16 of 2020)  
[2026] KEHC 1735 (KLR) (6 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1735 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
FAMILY APPEAL 16 OF 2020  
G MUTAI, J  
FEBRUARY 6, 2026**

**BETWEEN**

**EMMANUEL HATANGIMBAMBAZI ..... APPELLANT**

**AND**

**CLAUDINE SUSAN MUVANDIMWE ..... RESPONDENT**

**RULING**

1. Before me is the application dated 20th September 2024 through which the respondent/applicant seeks to stay the execution of the judgment delivered by this Court on 21<sup>st</sup> August 2024 pending appeal. In the said judgment, I found that no cogent evidence of a customary marriage between the parties was propounded. I found that:  
  
“In my view, the learned magistrate fell into error and made a presumption of marriage without sufficient evidence. His decision cannot, therefore, stand.”
2. The court further held that:  
  
“The upshot of the foregoing is that I find that the appeal has merit I. I set aside the judgment of the court below and substitute it with a judgment dismissing the petition.”
3. The respondent/applicant is afraid that, unless a stay is granted, she may be evicted from a property she contends is matrimonial property, and that if that happens, her appeal would be rendered nugatory.
4. In a reply affidavit sworn on 8th October 2024, the appellant/respondent opposed the application. It was urged that the respondent/applicant had introduced a new matter, namely, whether Plot No 9546 (original 5800/56) was matrimonial property. He contended that the respondent/applicant hadn't met the conditions for the grant of a stay pending appeal and prayed that the application be dismissed.



5. The application was canvassed by way of written submissions. The submissions of the respondent/applicant are dated 8<sup>th</sup> October 2024. Her counsel urged that the applicant be allowed.
6. On the other hand, the appellant/respondent opposed the application through submissions dated 26<sup>th</sup> January 2026.
7. I have considered the parties' submissions. In my view, the issue for determination is whether the court should issue a stay of execution pending appeal.
8. The conditions that an applicant for stay of execution pending appeal must meet are set out in Order 42 Rule 6(2) of the Civil Procedure Rules, which states that:

“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.”

9. An applicant must therefore show that:-
  - a. That she will suffer substantial loss unless a stay of execution pending appeal is granted;
  - b. The application was filed without undue delay; and
  - c. Provide security for the due performance of the decree or order that may ultimately be binding on her.
10. Will the respondent/applicant suffer substantial loss if a stay is not granted? In the case of RWW v EKW [2019] KEHC 6523 (KLR), it was held that:

“8. The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.”

11. There is, in this case, a likelihood that if a stay is not granted, the respondent/applicant may be required to vacate her current residency, which she occupies on the basis, which the appellant/respondent disputes, that she is his wife. Were this to happen, she would, no doubt, suffer substantial loss. I am thus persuaded that the first condition has been met.
12. There is no doubt that the application was filed without undue delay. The same was brought less than a month after the delivery of the judgment. The second condition has thus been met.



13. I agree with the submissions of the counsel for the respondent /applicant that, due to the nature of the matter, an undertaking as to damages shall suffice, if at all, and that the court may forego the requirement. In the case of RWW v EKW (Supra), it was further stated that:

“The other condition for granting stay orders is on the security to be offered. The law is that a party seeking stay must offer such security for the due performance of the orders as may ultimately be binding on the appellant. I am however of the considered view that in the circumstances of this cause and it being a matrimonial cause, the court can grant stay of execution of its orders without demanding that the Applicant furnish the Court with security for the due performance of the orders. As to whether the application was made without, unreasonable delay, I find in the affirmative.”

14. I am persuaded that the application dated 20<sup>th</sup> September 2024 has merit. The same is allowed as prayed.

15. It is so ordered.

**DATED AND SIGNED IN MOMBASA, THIS 6<sup>TH</sup> DAY OF FEBRUARY 2026. DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of:

Ms. Kemunto and Mr. Otieno, for the Appellant/Respondent;

Mr. Omagwa, for the Respondent/Applicant; and

Bancy- Court Assistant.

