

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
[MILIMANI LAW COURTS]
THE CIVIL APPELLATE DIVISION
(Coram: A.C. Mrima, J.)
CIVIL APPEAL NO. E761 OF 2025

-between-

CHRISTINE ANONO INGATI

.....**APPELLANT/APPLICANT**

-versus-

YADAV RAJ KUMAR.....1st
RESPONDENT

KALMER'S HOUSE OF CARS LIMITED.....2nd
RESPONDENT

RULING

1. This ruling is in respect to the application by way of a Notice of Motion dated 8th September 2025 where the Applicant sought for orders of stay of execution of the judgment and decree of the trial Court in *Milimani [Nairobi] CMCC No. E2227 of 2023* pending the hearing and determination of the appeal.

2. The application was anchored on the grounds on the face of it and the Supporting Affidavit of the Applicant sworn on even date. The Applicant was apprehensive that should execution issue, she would lose the motor vehicle registration number *KCX 911S* (hereinafter referred to as ***'the motor vehicle'***) by way of forced transfer. She emphasized that the motor vehicle was the subject of the appeal since the trial Court decreed it to the 1st Respondent. She further emphasized that the balance of convenience tilts in her favour as the Respondents will not suffer any prejudice, hence, the stay orders be granted. Additionally, she stated that the appeal raised substantive and arguable points of law and would be rendered nugatory should stay not be granted.

3. By a Replying affidavit sworn on 19th September 2025, *Yadav Raj Kumar*, the 1st Respondent herein, was vehemently opposed to the grant of stay orders on the basis that the appeal was untenable for reasons that the Applicant had made admissions at the trial Court and for this reason, the appeal was not arguable. Further, he contended that the Applicant had not offered any security and, therefore, the application was without merit.
4. The 2nd Respondent did not participate in the instant application.
5. The application was disposed of by way of written submissions where the participating parties duly complied. Parties argued their cases and referred to several decisions whose contents will be ingrained in this ruling.
6. Having carefully read the application, parties' written submissions and rival arguments, the issue for determination is whether the Applicant has met the prerequisite conditions for grant of orders of stay pending appeal being substantial loss, delay and security as provided for under *Order 42 Rule 6 of the Civil Procedure Rules*.
7. In the instant application, the impugned judgment was delivered on 15th July 2025 while the application was filed on 8th September 2025. The delay is around two weeks. Since the period is not inordinate long and the High Court is usually on recess as from the 1st August to 15th September coupled with the fact that the Applicant was represented by Counsel, the delay is excusable.
8. On the issue of substantial loss, the Applicant submitted that she would be dispossessed of the motor vehicle which remains registered in her name and, therefore, interfere on her proprietary rights over the same. Additionally, she submitted that there was a risk of the motor vehicle being transferred or disposed by the 1st Respondent, hence, rendering the appeal nugatory. She was emphatic that the judgment of the trial Court demanded specific performance and once the same was

executed, then it would not be reversed even when the appeal is successful.

9. It is the position that the impugned judgment decreed specific performance towards the transfer and registration of the subject motor vehicle to the 1st Respondent. Once that happens then the Applicant will not have any further control of any attendant events. Such may include further transfer, sale or the vehicle may even be used as a collateral. In the event such happens, then it will be an uphill task reversing such transactions. To this Court, the likelihood of the Applicant suffering substantial loss is real and in the face of a pending appeal.
10. On the security aspect, the Applicant confirmed her willingness to abide by any conditions ordered by this Court thereto.
11. Flowing from above and cognizant of the fact that the decree subject of the application is not a money decree, the Notice of Motion dated 8th September 2025 is merited and is allowed in the following terms:

[a] A stay of execution of the judgment and decree in *Milimani [Nairobi] Civil Case Number E2227 of 2023* dated 15th July 2025 be and is hereby issued on condition that the Applicant shall not in any manner whatsoever part with or interfere with the registration, alienate, transfer, sell or in any way dispose of the motor vehicle registration number KCX 911S pending hearing and determination of the appeal.

[b] Costs of the application to be in the appeal.

[c] The trial Court file be availed.

[d] This matter shall be fixed for further directions on the appeal before the Hon. Deputy Registrar.

Orders accordingly.

DELIVERED, DATED and SIGNED at NAIROBI this 10th day of February, 2026.

**A. C. MRIMA
JUDGE**

Ruling virtually delivered in the presence of:

Mr. Lumaswi, Learned Counsel for the Applicant.

Miss Adongo, Learned Counsel for 1st Respondents.

Michael/Amina - Court Assistants.