

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**CIVIL APPELLATE DIVISION**  
**CIVIL APPEAL NO. E792 OF 2025**

**MONS-CONS GENERAL CONTRACTORS LIMITED .....1ST**  
**APPELLANT**

**ROBERT NYANGORI.....2<sup>ND</sup>**

**APPELLANT**

**VERSUS**

**JONESMUS MWANZIA KITUU.....**

**RESPONDENT**

**RULING**

1. This ruling concerns the Appellants' Application dated 3rd September 2025, seeking orders for stay of execution of the judgment and decree issued in Milimani CMCC No. E3964 of 2023, pending the hearing and determination of the appeal.
2. The trial court entered judgment in favour of the Respondent on 24th July 2025, arising from a personal injury claim stemming from a road traffic accident that occurred on 4th June 2023. The decretal sum stands at Kshs. 4,177,503.41 inclusive of costs and interest.
3. Aggrieved by the said judgment, the Appellants lodged a memorandum of Appeal dated 1st August 2025 and subsequently moved this Court seeking stay of execution.

The Appellants propose to furnish security by way of a bank guarantee from a reputable financial institution.

4. The application is opposed by the Respondent through a replying affidavit dated 25th September 2025 and written submissions, wherein the Respondent urges the Court to reject the proposal for a bank guarantee and instead order payment of half of the decretal sum with the balance being deposited in a joint interest-earning account.

### **Appellants' Submissions**

5. The Appellants submit that the decretal sum is substantial, and payment thereof prior to determination of the appeal would occasion substantial loss. They argue that the Respondent has not demonstrated the financial capacity to refund the decretal amount should the appeal succeed.
6. It was submitted that the appeal is arguable and not frivolous, and denial of stay would render it nugatory. The Appellants added that the application was made without unreasonable delay and that they are willing to comply with the security requirement by providing a bank guarantee, which sufficiently safeguards the Respondent's interests.

### **Respondent's Submissions**

7. The Respondent, on his part, submits that a successful litigant is entitled to enjoy the fruits of judgment and that the Appellants have not demonstrated actual substantial loss beyond mere apprehension.

8. It was submitted that a bank guarantee is inadequate security in a money decree and that the appeal lacks merit and is not arguable.
9. According to the Respondent, justice demands a balancing of rights, and the Respondent proposes payment of half the decretal sum and the remainder deposited in court or a joint account.

### **Issues for Determination**

10. Having considered the application, affidavits, and submissions, I find that the main issue for my determination is whether the Applicants has made out a case for the granting of orders for stay of execution pending appeal.

### **Analysis and Determination**

11. The application is anchored on Order 42 Rule 6(2) of the Civil Procedure Rules, which provides that:

***No order for stay of execution shall be made unless —***

- (a) The court is satisfied that 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.***

### **Substantial Loss**

12. The cornerstone of stay is substantial loss. In ***Kenya Shell Ltd vs. Kibiru [1986] KLR 410***, the Court of Appeal held that: -

***“Substantial loss is the cornerstone of both jurisdictions for granting a stay. Without it, there is no basis for granting stay.”***

13. In the present case, the Appellants have demonstrated that the decretal sum is substantial and that the Respondent has not placed before Court any evidence of his ability to refund the amount if the appeal succeeds.

14. The Applicants assert that execution will expose him to attachment, sale of assets, and irreversible loss. I however note that the decree herein is purely monetary. In ***National Industrial Credit Bank Ltd vs. Aquinas Francis Wasike [2006] eKLR***, the Court held that : -

***“Once an applicant expresses reasonable fear that a respondent may not refund the decretal sum, the evidential burden shifts to the respondent to show ability to repay.”***

15. I am satisfied that the Appellants have demonstrated a real risk of substantial loss.

### **Delay**

16. I note that the impugned judgment was delivered on 24th July 2025, the appeal filed on 1st August 2025, and the present application filed on 3rd September 2025. I find that there was no unreasonable delay in filing the instant application.

### **Security for Due Performance**

17. Order 42 Rule 6(2)(b) of the CPR makes provision of security mandatory. In ***Focin Motorcycle Co. Ltd vs. Ann***

**Wambui Wangui [2018] eKLR**, it was held that the purpose of security is to guarantee the due performance of the decree and not to punish the judgment debtor.

18. In the instant case, the Appellants propose a bank guarantee, while the Respondent insists on partial payment of the decretal sum and a deposit of the balance in an interest earning account.

19. My finding is that considering the nature of this case which involved injury in a road traffic accident, a conditional stay would best serve the interests of justice.

20. Consequently and in balancing the Applicants' right of appeal against the Respondent's right to enjoy the fruits of his judgment, and guided by Order 42 Rule 6 CPR, I find that the Applicants have partially satisfied the threshold for stay.

21. Accordingly, I make the following orders:

***a) Stay of execution of the judgment delivered on 18th September 2025 is hereby granted but on condition that the Applicant shall, within 45 days of this ruling:***

***i) Pay to the Respondent the half of the decretal sum; and***

***ii) Deposit the balance of the decretal sum in an interest-earning joint account in the names of the parties' advocates, or in court, as security.***

***b) In default of compliance, the stay shall automatically lapse.***

***c) Costs of the application shall abide the outcome of the intended appeal.***

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF FEBRUARY 2026.**

**HON W. A. OKWANY  
JUDGE**

**In the presence of  
Kinyanjui for Mutegi for Appellant  
No appearance for Respondent  
Abdirzak - Court Assistant**