



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Ming'ala v Njeri & another (Civil Appeal E159 of 2025)
[2026] KEHC 1211 (KLR) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1211 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CIVIL APPEAL E159 OF 2025
FN MUCHEMI, J
FEBRUARY 5, 2026**

BETWEEN

EVA WANJIRU MING'ALA APPLICANT

AND

SIMON NJOROGE NJERI 1ST RESPONDENT

GENNA MWELU 2ND RESPONDENT

RULING

Brief facts

1. The two applications for determination dated 20th August 2025 and 22nd August 2025 seek for orders of stay of execution in respect of the judgment in Thika Small Claims Court SCCC No. E402 of 2023 delivered on 4th May 2025 pending the hearing and determination of the appeal. The applicant further seeks to have the court allow her to deposit a title in respect of land parcel LR. No. 29324/4 as security in lieu of Kshs. 200,000/- cash payment for security as ordered by the court.
2. In opposition to the application, the 1st respondent filed a Replying Affidavit dated 10th November 2025.

Applicant's Case

3. The applicant states that on 17th June 2025, the instant court issued an order directing that she deposit half the decretal sum amount in court as security of costs. The applicant avers that her former advocates did not communicate the conditions set for grant of stay in good time. The matter came up for directions on 22nd July 2025 whereas the court extended the interim orders and allowed the applicant an extension of ten days to raise the funds.



4. The applicant states that she was unable to raise the said amount due to tough economic times and she is willing to have Title No. LR. No. 29324/4 worth Kshs. 450,000/-, registered in her name, to be deposited in court as security to cover the full decretal sum pending the hearing and determination of the appeal. No prejudice shall be suffered by the respondents as the property is able to cover the full decretal amount.
5. The applicant states that on 21st August 2025, the matter came up before the Deputy Registrar and she intimated that she had filed an application dated 20th August 2025 which was set for hearing on 11th November 2025 with the interim stay orders having been vacated and the 1st respondent confirming his intention to hurriedly proceed with execution thus rendering the appeal in limbo and purely an academic exercise.
6. The applicant argues that since she was properly insured at the time of the alleged accident, the matter could be amicably solved with the insurance stepping in to pay the full amount.

The 1st Respondent's Case

7. The 1st respondent states that the applicant has failed to comply with an unambiguous court orders issued on 17th June 2025 requiring her to deposit half the decretal sum as security for costs and was further granted indulgence on 22nd July 2025 to comply within ten days, failing which the stay would lapse automatically. Further, the applicant has admitted to non-compliance but now seeks to alter the nature of the security by offering immovable property, an action that is both irregular and contrary to the express court directions and amounts to an attempt to circumvent lawful orders.
8. The 1st respondent argues that the applicant's offer to deposit title number LR. No. 29324/4 comes after default and cannot legally revive the stay orders that were vacated by operation of law due to non compliance. Furthermore, courts do not grant indefinite indulgence and the excuse of financial hardship cannot override express court orders or justify prolonged disobedience.
9. The 1st respondent states that he has not verified the alleged value of the property and land as security introduces further delays through valuation, registration and enforcement process undermining the principle of expeditious justice.
10. The 1st respondent states that the non compliance by the applicant has already prejudiced him by delaying the execution of a valid judgment. Further the suggestion that the matter can be settled through insurance is speculative and irrelevant to the present application which solely concerns compliance with court ordered security for costs. The 1st respondent urges the Honourable Court to uphold the finality and sanctity of its orders and ensure that judicial proceedings are not turned into an avenue for unjustified delay, obstruction or evasion of lawful obligations.
11. The 1st respondent argues that allowing the substitution of cash security with immovable property post default would set a dangerous precedent and open the flood gates to disobedience of court orders under the guise of hardship or alternative security. Further, the applicant's conduct demonstrates a lack of diligence and disregard for procedural timelines which should not be condoned by the court and granting indulgence would amount to rewarding a litigant who has shown consistent non compliance with court directives.
12. Parties disposed of the application by way of written submissions.



The Applicant's Submissions

13. The applicant relies on the cases of *Westmont Holdings SDN BHD vs Central Bank of Kenya & 2 Others* (Petition 16(E023 of 2021) [2023] KESC 11 (KLR) (17 February 2023) (Judgment) and submits that she has no intention of hindering the rights of the respondent in the suit and has not declined to tender the security for costs. The applicant argues that it would be unfair and unjust to dismiss the request to deposit the title as security for costs given that the proposed property is valued at a greater amount as compared to the required sum for security for costs.

The 1st Respondent's Submissions

14. The 1st respondent relies on the cases of *Westmont Holdings SDN BHD vs Central Bank of Kenya & 2 Others* (Petition 16(E023) of 2021) [2023] KESC 11 (KLR) and *Showcase Properties Limited vs John Mugambi t/a Mugambi & Company Advocates* (Civil Case E938 of 2021) [2023] KEHC 1574 (KLR) and submits that if security is ordered and the applicant fails to comply, the stay or conditional order lapses. The 1st respondent argues that the conditional stay issued by this court was explicitly predicated on the deposit of cash security within a fixed timeline and the applicant's admitted failure to comply meant that the stay lapsed automatically. Having defaulted, the applicant cannot now invoke equity or creativity in form of a property and offer to resuscitate what has lawfully ceased to exist. To permit otherwise would undermine the finality and certainty of court orders.
15. The 1st respondent submits that the applicant's assertion of carrying out a search and depositing the title as a form of security is legally hollow as the long process of property valuation, search for encumbrances, registration of charge, possible disputes, all introduce delay, uncertainty and risk of loss thereby undermining the very purpose of security for costs. Further, his right to have a valid judgment executed in timely course would be undermined.
16. The 1st respondent argues that a second application for security or for variation/substitution of security ought only to succeed where there has been a material and unforeseen change in circumstances since the original order. The applicant has brought forward nothing of the sort. Further, her search of the property is not a change of circumstances but a belated after thought. Her financial position, capacity to deposit security or her readiness to comply were never demonstrated instead she defaulted.

The Law

Whether the applications have merit.

17. The applicant filed an application for stay of execution dated 14th May 2025 under certificate of urgency and the court gave directions on 17th June 2025 that the applicant deposit half the decretal sum in court within thirty (30) days and in default, the interim orders stood vacated. On 22nd July 2025, the applicant informed the court that she did not comply with the orders of security as given by the court on 17th June 2025 due to financial constraints and she sought for an extension of 14 days. The court allowed the application and extended the time to deposit security for a further ten days and directed that in the event default occurred, the stay orders vacated automatically.
18. The matter came up for compliance on 21st August 2025 and the applicant confirmed to the court that she had not complied with the orders and had filed an application dated 22nd August 2025 to that effect. The court directed that the respondents respond to the application and informed the parties that the orders of stay had lapsed upon non compliance.



19. From the record, it is clear that this court made orders for stay on 17th June 2025 and extended them on application by the applicant with (10) more days to comply. The Applicant failed to comply within the time extended. Due to the noncompliance, the stay orders automatically lapsed on 1st August 2025. Even as the applicant filed her applications dated 20th and 22nd August 2025, the stay orders had automatically lapsed. This court was graceful enough to extend the period within which the applicant could deposit the security. It is not in dispute that the 1st respondent has a lawful judgment and has been kept away from enjoying the fruits of the judgment since the 4th May when it was delivered. The applicant having failed to comply with the initial orders of interim stay despite extension of time has failed to convince this court that she deserves issue of stay orders based on her second application.
20. That notwithstanding the impugned ruling which is the subject of appeal dismissed the applicant's application for setting aside of the default judgment dated 8th June 2023. The court below dismissed the applicant's application dated 31st January 2025 for stay of execution of a negative order that is incapable of execution. This principle was enunciated by the Court of Appeal in *Co-operative Bank of Kenya Limited vs Banking Insurance & Finance Union (Kenya)* [2015] eKLR where the court held as follows:-

An order for stay of execution (pending appeal) is ordinarily an interim order which seeks to delay the performance of positive obligations that are set out in a decree as a result of a judgment. The delay of performance presupposes the existence of a situation to stay – called a positive order – either an order that has not been complied with or has partly been complied with.

21. Similarly in *Kenya Commercial Bank Limited vs Tamarind Meadows Limited & 7 Others* [2016] eKLR the Court of Appeal expounded on stay of execution stating:-

In *Kanwal Sarjit Singh Dhiman vs Keshavji Juvraj Shah* [2008] eKLR the Court of Appeal while dealing with a similar application for stay of a negative order, held as follows:-

The 2nd prayer in the application is for stay (of execution) of the order of the superior court made on 18th December 2006. The order of 18th December 2006 merely dismissed the application for setting aside the judgment with costs. By the order, the superior court did not order any of the parties to do anything or refrain from doing anything or to pay any sum. It was thus, a negative order which is incapable of execution save in respect of costs only.

The same reasoning was applied in the case of *Raymond M. Omboga vs Austine Pyan Maranga* (supra) that a negative order is one that is incapable of execution, and thus, incapable of being stayed. This is what the Court had to say on the matter:-

The order dismissing the application is in the nature of a negative order and is incapable of stay of execution, save perhaps, for costs and such order is incapable of stay. Where there is no positive order made in favour of the respondent which is incapable of execution, there can be no stay of execution of such an order....The applicant seeks to appeal against the order dismissing his application. This is not an order capable of being stayed because there is nothing the applicant has lost. The refusal simply means that the applicant stays in the situation he was in before coming to court and therefore the issues of substantial loss that he is likely to suffer and or the appeal being rendered nugatory does not arise....

22. The fact that the orders of the court below sought to be appealed against were negative. For this reason, application before this court seeking stay has little chances of success. The said negative order did not



order any of the parties to do anything or restrain from doing anything and is therefore incapable of execution. These facts reduces the chances of success of the intended appeal.

23. It is further noted that even if the order of the lower court was positive, the applicant would require to satisfy the conditions of order 42 Rule 6 in order to qualify for grant of orders for stay pending appeal. The applicant has not attempted to satisfy the said requirements herein.
24. It must be appreciated that in this matter, there are no valid orders of stay in existence. The orders issued by this court on 17th June 2025 and extended on 22nd July expired on 21st August 2025. As such, there are no orders capable of being extended and as such, this court cannot keep going back and forth by allowing substitution of security.
25. Even assuming that there are valid orders in existence, the security of land title offered by the applicants has no legal force in that it is not accompanied by any valuation report or undertaking to surrender it for the amount of security upon conclusion of the intended appeal.
26. Consequently, I find no merit in the applications dated 20/08/2025 and 22/08/2025. The applications are dismissed with costs to the respondents.
27. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 5TH DAY OF FEBRUARY 2026.

F. MUCHEMI

JUDGE

