



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
ELCLA NO E027 OF 2025

HARRIS MAINGI NGURURI..... APPELLANT
VERSUS
ANDREW GACHINGIRI NGAHU RESPONDENT

(An appeal from the judgment of Honourable J. Irura at the Senior Principal Magistrates Court in Kigumo dated the 9th of June 2025)

RULING

[1] This ruling is on the notice of motion dated 9-7-2024. The motion which is by the Appellant is brought under **Section 3A** of the **Civil Procedure Act** and **Order 42 rule 6(1)** of the **Civil Procedure Rules**. The motion seeks one main order.

“ That this Court be pleased to stay execution of the judgment delivered on 9-6-2025 in Kigumo MCC No. 135 of 2015 pending the hearing and determination of this appeal.”

[2] The motion is based on nine (9) grounds and is supported by an affidavit of the Applicant dated 9-7-2025 which has two annexures which are the judgment dated 9-6-2025 and a copy of the memorandum of Appeal dated 1-7-2025. The gist of the grounds of appeal and the supporting affidavit is as follows. Firstly, the judgment of the lower Court ordered the Appellant to refund a sum of Kshs. 1,950,000/= to the Respondent. Secondly, the Appellant is aggrieved by the entire judgment of the lower Court. Thirdly, the pending appeal will be rendered nugatory and the Appellant stands to suffer irreparable harm if the application is not allowed. Finally, the Appellant is willing to abide by any reasonable conditions that the Court may impose.

[3] The motion is opposed by the Respondent who has filed a replying affidavit dated 24-7-2025 in which he responds as follows. One, the decree herein is a money decree and

therefore, the Appellant does not stand to suffer irreparable harm. Two, since the Appellant has title to the suit land he may alienate the said land and in that event, it is the Respondent who stands to suffer loss. For the above and other reasons, he prays for the dismissal of the motion.

[4] Counsel for the parties filed written submissions dated 13-11-2025 and 15-11-2025 respectively. In the submissions the issues raised are as follows.

- (i) **Whether the appeal is arguable and not frivolous.**
- (ii) **Whether the Appeal if successful will be rendered nugatory.**
- (iii) **Whether the Appellant should furnish security for the due performance of the decree.**
- (iv) **The balance of convenience and interests of justice.**

[5] I have carefully considered the motion dated 9-7-2025 in its entirety including the grounds, the two affidavits and the annexures, the written submissions by counsel for both parties, the issues raised therein and law cited by both counsel.

I find that under **Order 42 Rule 6 (2)** of the Civil Procedure Rules, only three conditions ought to be considered in dealing with an application for stay of execution pending appeal.

- (i) **Whether substantial loss may result to the Applicant.**
- (ii) **Whether the application has been made without unreasonable delay.**
- (iii) **Whether the Applicant has given security for the due performance of the decree.**

All the three conditions must be satisfied before the order for stay is allowed. Failure to satisfy even one of the three conditions means that the application will not be allowed.

[6] It is my finding that the Appellant has not proved that he stands to suffer substantial loss. The decree is for money the amount of which is specified. There is no deposition by the Appellant that the Respondent will be unable to repay the decretal sum in the event that this appeal is successful. For now the Respondent is a successful litigant who should be allowed to enjoy the fruits of his long litigation.

[7] Regarding the second ground, I find that this application was filed in good time because the judgment is dated 9-6-2025 and the filing was on 1-7-2025. The Appellant has satisfied this condition.

[8] Finally on the issue of security for the due performance of the decree, I find that the Appellant is not convincing on the security that he is offering. In paragraph 6 of the supporting affidavit he is not firm. He says that he is **“willing to comply with any conditions that the Court may impose...”** He should be more forthright and bold and state the amount he is offering. I am not satisfied that he is ready, willing and able. If that were the case, he would be more bold. He should not wait for the Court to impose. He should strongly state and commit himself on what his offer is.

I therefore find the second condition not satisfied. Since the three conditions in **Order 42 rule 6(2)** of the **Civil Procedure Rules** have not been satisfied all together as they should be, I find **no merit** in the motion dated 9-7-2025. I **dismiss** the motion. Costs in the cause.

It is so ordered.

Dated, signed and delivered virtually at Murang’a this 18th day of February, 2026.

**M. N. GICHERU
JUDGE**

Delivered online in the presence of:-
Court Assistant – Mwangi Njonjo
Appellant’s Counsel - Mr.Ngure
Respondent’s Counsel - Mr Kirubi