

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**CIVIL APPEAL NO. E016 OF 2025**

**PORT FLORENCE COMMUNITY HOSPITAL ..... APPELLANT**

**- VERSUS -**

**LAKEPHARM LIMITED ..... RESPONDENT**

**RULING**

1. This is a ruling on a Motion on Notice dated **30/6/2025**. That Motion was by the appellant for stay of execution pending appeal under ***Order 42 Rule 6 of the Civil Procedure Rules***.
2. The Motion was opposed vide a Replying affidavit sworn by **Faud Abdi Shakur** on **9/7/2025**. The parties were agreeable on stay subject to posting of security. What they did not agree on is the nature of the security to be posted. Whilst the appellant preferred a bank guarantee, the respondent pressed for a cash deposit.
3. The appellant filed submissions whilst the respondent relied on its aforesaid replying affidavit. The appellant submitted that on the authority of **RWW v EKW (2019) eKLR**, the object of stay is to preserve the subject matter of a dispute pending appeal. That the appellant shall suffer substantial loss if the stay was not granted. The case of **Tropical Commodities Ltd**

**International (In liquidation) (2004) 2 EA** was relied on in support of that contention.

4. That the respondent had not disclosed its financial position. If execution was proceeded with, it will be impossible to retrieve the monies from the respondent.
5. I have considered the representations by learned counsel. The only issue for consideration is the nature of the security to be offered. The appellant has offered a bank guarantee whilst the respondent has preferred deposit of the decretal sum in an interest earning account.
6. The purpose of a security in a stay application is to preserve the subject matter of an appeal. The nature of the security is in the discretion of the Court. Like all other discretions, the same should not be exercised capriciously but judiciously. What really matters is that the Court has to ensure that the security offered comforts the successful party in the event an appeal is unsuccessful.
7. In the present case, either of the two modes proposed by the parties will be sufficient comfort for the respondent. It will be assured that if the appeal is unsuccessful, the decretal sum will be available and recoverable summarily. The route of bank guarantee is cheaper as the appellant will only have to pay

to the bank to offer the same while depositing the decretal sum would entail being out of pocket for the entire sum.

8. Accordingly, in the world of commerce, issuance of a bank guarantee for the decretal sum makes sense as the amount in the decretal sum is not paid out. All a party has to do is pay for it and have it guaranteed. Accordingly, let the appellant post a bank guarantee for the decretal sum within 21 days of the date hereof in default execution to issue. Costs in the appeal.

It is so ordered.

**DATED** and **DELIVERED** at Kisumu this **19<sup>th</sup>** day of **February, 2026**.

**A. MABEYA, FCI Arb**

**JUDGE**