

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
(CIVIL DIVISION)
HCCA NO. E292 OF 2025

SIMON K SANGAPPELLANT

VERSUS

DANIEL OGUTU.....RESPONDENT

RULING

1. In a judgment delivered on 28th August 2025, the court below awarded the respondent the sum of **Kes 2,000,000** as general damages for slander, libel, and loss of character, aggrieved damages of **Kes 200,000**, and **Kes 200,000**, in lieu of an apology.
2. Being aggrieved with the said decision, the appellant appealed to this court. He also filed an application dated **3rd October 2025**, vide which he sought a stay of execution of the impugned judgment pending the hearing and determination of the appeal.
3. The application is opposed. The respondent filed a replying affidavit sworn on **14th October 2025** in which he averred that the application had no merit and should be dismissed. He indicated that the appellant had not shown that he would be unable to repay the decretal sum if the execution were allowed to proceed.

4. The application was canvassed by way of written submissions. The appellant's submissions are dated 2nd October 2025. Those of the respondent are dated 24th October 2025. I have considered them carefully.

5. I note that the conditions for the grant of stay pending appeal are set out in Order 42 Rule 6 of the Civil Procedure Rules. The said provision states that:

“No order for stay of execution shall be made under subrule (1) unless-

(a)The court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

(b)such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

6. To succeed, an applicant must show that:

- a. He will suffer substantial loss unless a stay is granted;
- b. The application was filed without undue delay; and
- c. Provide security.

7. These conditions are well understood. The court will not belabor them. Suffice to say that the conditions are conjunctive, in the sense that they must all exist, for the stay to issue. In this case, the appellant stated that the respondent had threatened execution and attached a copy of a demand letter. I note that the amount demanded is substantial. That said, it wasn't

averred that the respondent would be unable to repay the decretal amount if the execution was permitted to proceed. I agree with the decision of the court in the case of **Ujagar Singh v Runda Coffee Estate Ltd (1966) EA 263** that:

“It is not normal for a court to grant a stay of execution in monetary decrees. Stay will only be granted where special features, such as the issue of the regularity of the judgment, or where the respondent has no known assets within the jurisdiction from which the applicant may recoup, if successful.”

8. I must add that it hasn't been shown that the appellant will suffer substantial loss. This is a burden of proof that the appellant carried, and which he didn't discharge.
9. The requirements in the rules are conjunctive; they must all exist for an order staying the execution of a judgment or order to issue. Since the first element does not exist, there is no need for me to enquire if the other 2 conditions have been met. That is an unnecessary academic exercise.
10. The upshot of the foregoing is that I find and hold that the application dated **3rd October 2025** is bereft of merit. The same is dismissed with costs.
11. It is so ordered.

Dated and signed in Mombasa, this 12th day of February, 2026. Delivered
virtually through **Microsoft TEAMS.**

Gregory Mutai

JUDGE

In the presence of:

Mr Busieka for the Respondent;

Mr Kulele holding brief for Mr Magolo -senior for the Applicant; and

Ms Bancy – Court Assistant

Original