

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT NAIROBI
ELCA NO. E040 OF 2024

JAWANGA INVESTMENTS LIMITED -
APPELLANT/APPLICANT

VS

S. K SHAH T/A LEWINS - RESPONDENT
ADCOM GENERAL TRADERS LIMITED - INTERESTED
PARTY

RULING

(In respect of the Appellant's Application dated 2/10/2025)

1. The Applicant moved this court vide the application dated 2/10/25 for orders for the immediate release of monies deposited by the Applicant with the judiciary deposit collection account [Account details withheld], being the sum of Kshs 1.5 Million.
2. The application is supported by the affidavit of Charles Waweru, the Director of the applicant, deponed on even date, as follows; the court ordered the applicant to deposit the sum of Kshs 1.5 Million as security for the just-concluded appeal; the judgment on appeal was delivered on 25/9/25, allowing the appeal with costs, thus discharging the applicant from any liability, and the aforesaid deposit ought to be released to it;

no prejudice will be suffered by the respondent, since the appeal has been concluded.

3. Opposing the application, Mayur K Shah deponed and joined issue with the applicant, stating that the judgment of this court was delivered on 25/9/25 in favour of the applicant; that the sum of Kshs 1.5 Million was deposited by the applicant pending the hearing and determination of the first appeal in this court; that, being dissatisfied with the judgment of the court, he has proceeded to file a notice of appeal to the court of appeal and sought typed proceedings as well; that he is aggrieved by the decision of this court that found the service of the notice to terminate proper; further, that he was evicted and goods worth Kshs 10 Million were confiscated by the Landlord, who still retains the same to date; that the court ought to stay the proceedings herein, including the release of the deposit aforesaid, until his appeal is heard and determined on appeal; finally, that the interest of justice will be effectively served if the deposit is not released to the applicant.
4. Charles Waweru, in his further affidavit sworn on 10/10/25, clarified that the respondent's goods cannot be made an issue now, that in any event the said goods are safely stored at a disclosed location, and that he has been requested severally to collect them but has remained adamant and completely refused to do so. Further, the deponent avowed that the applicant will suffer prejudice if the deposit is held for no

apparent reason, noting that the appeal has concluded; hence, no further security is required, notwithstanding the respondents' dissatisfaction with the judgment.

5. Parties have filed a written submission, which I have read and considered.
6. The key issue for determination is whether the application is merited.
7. It is not in dispute that, vide a ruling of the court delivered on 11/3/25, the court ordered the applicant to deposit the sum of Kshs 1.5 million into the court's account as security for costs. It is not in dispute that the applicant subsequently complied with the said order and deposited the decreed sum pending the hearing and determination of the appeal.
8. According to the record, the court delivered its judgment in this appeal on 25/9/25 in favour of the applicant, hence the order seeking the release of the deposit.
9. The respondent contends that the deposit should not be released for two reasons: firstly, that an appeal has been lodged in the Court of Appeal against this Court's judgment; and secondly, that the applicant is in possession of goods valued at Kshs 10 million.
10. The applicant has urged for the release of the deposit, asserting that its continued retention is detrimental to his interests, as he needs to return the funds to the individual who lent him the money. There are no justifiable grounds to retain the deposit. With the appeal having been adjudicated, the

issue of goods does not constitute sufficient cause to withhold the deposit. Furthermore, the applicant stated that the goods are securely stored in a disclosed location, but the respondent has refused to retrieve them. Lastly, he contended that if the respondent has indeed lodged an appeal with the Court of Appeal, it is incumbent upon the respondent to provide security as may be ordered by the court, given that the respondent is the appellant, not the applicant herein.

11. In determining whether to release a deposit, the court must consider whether the purpose of the deposit has been fulfilled or extinguished, for example where the appeal was successful, the case has been withdrawn, or costs have been paid, and/or where there is no stay of execution.
12. The court concludes that neither the act of filing an appeal by the respondent nor the purported withholding of goods provides adequate grounds to deny the application currently before the court. Given that the appeal has been resolved, I find no justification to withhold the deposit. Furthermore, if an appeal has been filed in the appellate Court, any security as may be ordered by the court shall be the responsibility of the appellant, not the applicant.
13. In the end, I find no reason to deny the applicant the orders of release of the deposit, which I hereby do.
14. The application is allowed with no orders as to costs.
15. Orders accordingly

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 19TH
DAY OF FEBRUARY, 2026 VIA MICROSOFT TEAMS.**

**J. G. KEMEI
JUDGE**

Delivered Online in the presence of:

1. Mr Mwaura for the Appellant/Applicant
2. N/A for the Respondent
3. CA - Yvette Njoroge