



REPUBLIC OF KENYA



Ndirangu t/a Kingstar Auctioneers & another v Mrihani Limited & another (Commercial Appeal E208 of 2025) [2026] KEHC 2034 (KLR) (Commercial and Tax) (19 February 2026) (Ruling)

Neutral citation: [2026] KEHC 2034 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL APPEAL E208 OF 2025
BK NJOROGE, J
FEBRUARY 19, 2026**

BETWEEN

**ALEX WAHOME NDIRANGU T/A KINGSTAR AUCTIONEERS 1ST
APPELLANT**

MYCREDIT LIMITED 2ND APPELLANT

AND

MRIHANI LIMITED 1ST RESPONDENT

LEWIS NGUYAI NG'ANG'A 2ND RESPONDENT

RULING

1. The Applicants filed the Notice of Motion dated 18th July 2025.

Background Facts

2. The Applicants are seeking the following orders;
 - a. The Court to order a stay of execution of the Ruling and Orders of Hon. Rawlings Liluma Musiega (SRM) in MCOMMSU No. 282 of 2025, Mrihani Limited & Lewis Nguyai Nganga vs- Alex Wahome Ndirangu T/A Kingstar Auctioneers & Mycredit Limited of 11th July 2025 pending the hearing and determination of the Appeal.
 - b. Pending the hearing and determination of this Application inter partes, there be a stay of the proceedings in MCOMMSU No. 282 of 2025 Mrihani Limited & Lewis Nguyai Nganga - vs- Alex Wahome Ndirangu T/A Kingstar Auctioneers & Mycredit Limited.



- c. Pending the hearing and determination of the Appeal, there be a stay of the proceedings in MCCOMMSU No. 282 of 2025 Mrihani Limited & Lewis Nguyai Nganga -vs- Alex Wahome Ndirangu T/A Kingstar Auctioneers & Mycredit Limited.
- d. The costs of the Application be provided for.
3. The Application was supported by the Affidavit of David Kage, the Debt Recovery Manager of the 2nd Applicant. The Applicants contended that although the Ruling was scheduled for delivery on 4th July 2025, the Trial Court did not sit on that date. That parties were informed that the Ruling would be uploaded on the CTS. The Ruling was later uploaded on 16th July 2025 but purportedly delivered on 11th July 2025 without notice and in the absence of the Applicants. It therefore denied them an opportunity to seek a stay of execution pending Review or an Appeal. Consequently, the present application has been filed under a Certificate of Urgency.
4. The Applicants further argued that the Ruling and resulting Orders are irregular, oppressive, and prejudicial. The Trial Court ordered the release of motor vehicle registration number KDJ 900L, which had been pledged as security for a KES 7,000,000 loan advanced by the 2nd Applicant to the Respondents, despite undisputed evidence of total non-repayment for over 21 months. Additionally, the Trial Court imposed a condition requiring the Respondents to deposit KES 5,000,000 in Court—a relief not sought by the Respondents. This the Applicants argue effectively rewrites the parties’ contract, undermines the 2nd Applicant’s lending business, and unjustly benefits the defaulting Respondents.
5. The Applicants urged the Court to stay the proceedings and execution of the Trial Court’s Ruling and Orders of 11th July 2025 to prevent further adverse orders arising from the impugned decision. They contend that, without the stay order, the Respondents will deposit KES 5,000,000 in Court and regain possession of the motor vehicle pledged as loan security. That this will occasion substantial prejudice and continued business losses to the Applicants despite their full compliance with the contractual terms.
6. The Applicants further asserted that unless a stay of proceedings is granted, the Trial Court may continue to determine the matter while the present application and appeal are pending. Thus, rendering them nugatory. They maintain that the Appeal is arguable, meritorious, and has high prospects of success.
7. In response, the Respondents filed the Replying Affidavit, sworn on 28th July 2025. The Respondents contended that the confiscation was arbitrary, irregular, and procured without full disclosure. That the vehicle—central to the dispute—was seized and retained by the 1st Applicant despite ongoing challenges to the legality of that action. Upon learning of the Order, the Respondent promptly moved the Court to protect its proprietary interest and sought an independent revaluation of the vehicle in compliance with Rule 10 of the Auctioneers Rules. Interim Orders were issued on of 11th July 2025 to preserve the status quo and ensure fairness pending determination of the suit.
8. The Respondent maintained that it is fully complying with the interim orders and acting in good faith, while faulting the Applicants for failing to provide proper accounts and financial records as required under the *Consumer Protection Act*. It is further argued that the motor vehicle, valued at approximately Kshs. 5 million, constitutes reasonable security against the disputed loan of Kshs. 7 million. This is particularly as no final determination has been made. The interim orders are described as temporary and protective, intended to balance the parties’ interests. It is asserted that allowing reasonable use of the depreciating asset is more equitable than continued detention. Consequently, the Respondent



contends that the application for stay is premature, lacks merit, and is intended to undermine the Court's effort to prevent injustice pending the full hearing of the dispute.

Issues for determination

9. Having considered the Application, the response, and the written submissions by the parties, the Court drafts the following issues for determination;
 - a. Whether an order of stay of execution pending appeal should issue.
 - b. Whether an order of stay of proceedings should issue.

Analysis

10. The Application herein seeks a stay of execution of the interim orders issued on 11th July 2025. It arises from the confiscation of Motor Vehicle Registration No. KDJ 900L through an ex parte order obtained in Nakuru Miscellaneous Application No. E50 of 2025.
11. The law governing the grant of orders for a stay of execution pending appeal is codified under Order 42 Rule 6 (1) and 2 of the Civil Procedure Rules, which stipulates as follows: -
 1. No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on the application being made, to consider such application and to make such order thereon as may to it seems just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is referred may apply to the appellate court to have such order set aside.
 2. No order for a stay of execution shall be made under sub-rule (1) unless—
 3.
 - (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.
12. Thus, under Order 42 Rule 6(2) of the Civil Procedure Rules, an applicant should satisfy the court that:
 1. Substantial loss may result to him/her unless the order is made;
 2. That the application has been made without unreasonable delay; and
 3. The applicant has given such security as the court orders for the due performance of such decree or order as may ultimately be binding on him.
13. Further to the above, the Court of Appeal in *Butt Vs Rent Restriction Tribunal* [1979] stated what ought to be considered in determining whether to grant or refuse a stay of execution pending appeal. The Court said that: -
 - a. The power of the court to grant or refuse an application for a stay of execution is discretionary, and the discretion should be exercised in such a way as not to prevent an appeal.



- b. Secondly, the general principle in granting or refusing a stay is, if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should the appeal court reverse the judge's discretion.
 - c. Thirdly, a judge should not refuse a stay if there are good grounds for granting it merely because, in his opinion, a better remedy may become available to the applicant at the end of the proceedings.
 - d. Finally, the Court in exercising its discretion whether to grant or refuse an application for stay will consider the special circumstances and its unique requirements. The court in exercising its powers under Order XLI Rule 4(2) (b) of the Civil Procedure Rules, can order security upon application by either party or on its motion. Failure to put security of costs as ordered will cause the order for stay of execution to lapse.
14. Has the application has been made without unreasonable delay? The Ruling was delivered on 11th July 2025 and the Applicant filed the instant application on 18th July 2025. Thus, the application has been filed timeously.
 15. Substantial loss - As to whether substantial loss may result if the orders sought are not granted, it was the Applicants' submission that they will suffer great loss for reason that the 2nd Respondent was granted the sum of Kes. 7,000,000/-. The said sum is a colossal sum that is very crucial to the 2nd Applicant's business. The 2nd Respondent totally defaulted in repaying the loan. The Respondents have not contested the statement of account and/or its accuracy. There is no evidence of any payments made by the Respondents and not reflected in the statement of account.
 16. In contrast, the 2nd Respondent argued that the vehicle is a depreciating asset and therefore leaving it idle will diminish its value and utility if the Applicant is given possession. Further, the interim orders were issued on equitable grounds to protect both parties and preserve the subject matter of the suit. Therefore, placing the vehicle in the Applicants' control would be greatly prejudicial to the Respondents.
 17. On the question of substantial loss, the Court is guided by the decision in *Tropical Commodities Suppliers Ltd & Others v International Credit Bank Ltd (in liquidation)* [2004] 2 EA 331, where Ogolla, J stated:

“Substantial loss does not represent any particular mathematical formula. Rather, it is a qualitative concept. It refers to any loss, great or small, that is of real worth or value as distinguished from a loss without value or a loss that is merely nominal.”
 18. On this point the Court finds that the Applicant has not demonstrated the substantial loss to be suffered. The orders issued by the Trial Court required the 2nd Respondent to pay an amount of Kshs.5,000, 000 and the motor vehicle released to him. The difference between the amount advanced (Kshs.7,000,000/=) and the amount to be deposited in Court (Kshs.5,000,000/=) is Kshs.2,000,000/= . Ideally the amount to be deposited in Court will constitute a security for the Decree. The Vehicle itself has a value and can be attached and sold to recover the loan or the shortfall.
 19. This Court is alive to the fact that the Stay Orders granted by the Trial Magistrate are discretionary. At this point in time, the Appeal has not been set down for hearing. The Court will hesitate to make comments that may prejudice the Learned Judge who will ultimately hear this Appeal.
 20. The Trial Court exercised its discretion in granting the Order of an injunction as well as attaching a condition to the grant of such an injunction. It is not clear whether the Respondents did comply with



the condition prescribed by the Trial Magistrate. In any event, that is an issue or query to be raised with the Trial Court and not this particular Court. The Consequences of default of Court Orders such as were attached to the Injunction, must mean something.

21. The Court is unable to stay the injunction as granted by the Trial Magistrate.
22. Security - the purpose of security was explained in the case of Arun C. Sharma vs Ashana Raikundalia t/a Raikundalia & Co. Advocates & 2 Others [2014] eKLR.
23. Evidently, the issue of security is discretionary, and it is upon the Court to determine the same. The Applicant submitted that there is no security that is payable by the Applicants from the ruling of the Trial Court.
24. In exercising its discretion, the Court is of the considered view that neither was an order made requiring the Applicants to pay any sums, nor were costs awarded against them. Accordingly, there is no liability on the part of the Applicants that would necessitate the provision of security as a condition for the grant of stay of execution. In the circumstances, the issue of security does not arise in the present Application.
25. The Applicants also sought the order of stay of proceedings. The Applicants contended that unless orders of stay of proceedings are issued, the Trial Court will proceed to make determinations in the matter while this Application and Appeal are still pending before the Court, rendering the same nugatory and to the extreme prejudice of the Applicants herein.
26. The Court in Kenya Wildlife Service v James Mutembei [2019] KEHC 10478 (KLR) held as follows;
 - “(5) I have carefully considered the instant application and the rival submissions by the parties. This is essentially an application for stay of proceedings in Maua CMCC 46 of 2017 James Mutembei v Kenya Wildlife Service pending the hearing and determination of this appeal. Stay of proceeding should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent.”
27. In reiteration of the above holding, in the case of Kenya Power & Lighting Co. Ltd vs. Esther Wanjiru Wokabii Civil Appeal No. 326 of 2013 (2014) eKLR, quoted Ringera J. (as he then was) in the case of Global Tours & Travels Limited, Nairobi HC Winding Up Cause No. 43 of 2000; The Court distilled the following three main principles to guide a Court in such applications:
 - a) Whether the Applicant has established that he/she has a prima facie arguable case.
 - b) Whether the application was filed expeditiously and
 - c) Whether the Applicant has established sufficient cause to the satisfaction of the Court that it is in the interest of justice to grant the orders sought.
28. A stay of proceedings is an exceptional and far-reaching remedy that ought to be issued only in limited circumstances. The Court concurs that, if granted, such an order hinders the expeditious determination of disputes, increases the likelihood of Appellate Courts being burdened with multiple appeals arising from interlocutory or routine decisions, and operates as a substantial constraint on the parties' right to a fair hearing under Article 50 of *the Constitution*. It also runs counter to the principle set out in Article 159(2)(b) that justice shall not be delayed.



29. The Court finds that the Applicants have raised arguable grounds of appeal, and the Application was filed without delay. It however is not persuaded that there exists sufficient cause to the satisfaction of the Court and in the interests of justice to stay the proceedings before the Trial Court. It is in the business of the Court to hear and determine cases expeditiously. It would be unfair to stop the Trial Magistrate from hearing and determining the case before the Learned Magistrate unless for exceptional reasons and circumstances. The Court is not persuaded that should the Trial Magistrate proceed to hear the parties and finalise the suit, even before this Appeal is heard and determined, the sky will fall down upon the Appellants' heads. On the other hand, should this Appeal be heard and finalized before the Trial Magistrate concludes the case, the Orders emanating from the Appeal can be implemented by the Trial Magistrate.
30. Consequently, it would serve the parties interest if the pending matters are heard and determined expeditiously.
31. As to Costs, the same lie at the discretion of this Court. Costs follow the event. Therefore, the same are awarded to the successful Respondents.

Determination

32. The Appellants/Applicants Application dated 18th July, 2025 is HEREBY dismissed for lack of merits.
33. The costs thereof are awarded to the Respondents.
34. Parties are directed to take directions to fast track the hearing and disposal of the Appeal.
35. It is so ordered.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 19TH DAY OF FEBRUARY, 2026.

NJOROGE BENJAMIN K.

JUDGE

In the presence of:

Miss Njoroge for the Appellants/Applicants.

N/A for Saya, Muhoro & Munialo for Respondents

Peter Wabwire - Court Assistant.

