

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUNGOMA**  
**CIVIL APPEAL NO. E123 OF 2022**

**CENTRINE WEKESA WAFULA .....**  
**APPLICANT**

**-VERSUS-**

**GRACE WAIRIMU WANGUNDU .....**  
**RESPONDENT**

**RULING**

1. The application before the Court is dated 4<sup>th</sup> November 2025 and seeks the following Orders: -
  - (a) Spent
  - (b) **This Honourable Court be obliged to issue an order for stay of the Ruling delivered on 25<sup>th</sup> November, 2022 by Honourable C.A.S MUTAI in Bungoma Chief Magistrate's Court Civil suit number 486 of 2015 and the Judgment delivered on 30<sup>th</sup> September 2025 in Bungoma High Court HCCA/E123 of 2022 delivered by Her Ladyship Justice R.E OUGO pending hearing and determination of the appeal and this application inter-partes.**
  - (c) **THAT the Plaintiff/Respondent may at any time execute the Ruling obtained in Lower Court and Judgment obtained before this honourable court.**
  - (d) **Costs of this application be in the cause.**

2. In response to the Application, the Respondent filed Grounds of Opposition sworn on 6th November 2025. She averred that the Application was frivolous, vexatious, scandalous, and an abuse of the court's due process, as it contravened Order 9 Rule 9 of the Civil Procedure (Amendment) Rules 2020. It was further averred that a negative order could not be stayed and that the trial court did not issue an order capable of being executed.
3. The main issue for my determination is whether the application is justified and should be allowed.

#### **ANALYSIS AND DETERMINATION**

4. I have considered the application alongside the rival affidavits. The Applicant argued that the stay application is justified and should be granted as requested. The Respondent, however, contended that the Appellant, having been represented by an advocate, cannot file the application without first complying with Order 9 Rule 9 of the Civil Procedure (Amendment) Rules 2020. He referred to the case of Archer & v Archer & 2 Others (Environment & Land Case 345 of 2017 [2024] KEELC), which I have taken note of. It was further argued that negative orders cannot be stayed and that, based on the record, there was no enforceable order issued by the trial court.
5. In its Ruling Civil Case No. 486 of 2015, the trial court stated that the Defendant was guilty of laches because the Application for leave to file additional evidence out of time was made seven years after the Plaintiff had been filed. The matter was brought on appeal before this Court, where the

trial court's decision to dismiss the Application was upheld. This Court, in dismissing the appeal, found that the appellant had seven years to file the additional evidence but failed to do so.

6. In my view, negative orders cannot be stayed. In the case of Registered Trustees, Kenya Railways Staff Retirement Benefits Scheme v. Milimo, Muthomi & Co. Advocates & 2 others [2022] KECA 491, the Court of Appeal observed:-

***“17..... As submitted by the learned counsel for the 1<sup>st</sup> Respondent, the position taken by this Court in respect of applications for stay of execution in respect of negative orders is clear. Negative orders cannot be stayed. We reiterate the sentiments of the predecessor of this Court in its decision in Western College of Arts and Applied Sciences v Oranga & Others [1976-80] where the Court stated in respect of stay of execution as follows;***

***“But what is there to be executed under the judgement, the subject of the intended appeal” The High Court was merely dismissing the suit with costs. Any execution can only be in respect of costs. In Wilson v Church, the High Court had ordered the trustees of a church to make a payment out of that fund. In the instant case, the High Court has not ordered any of the parties to do anything or to refrain from doing anything, or***

***to pay any sum. There is nothing arising out of the High Court Judgment for this Court, in an application for stay. It is so ordered”.***

7. In conclusion , I find that the prayer for a stay of execution pending appeal is unmerited since negative orders cannot be stayed. The proper practice would be for the Applicant or intended Appellant to seek a stay of execution from the court where she intends to lodge her appeal, in this case, the Court of Appeal. I find no merit in the application and hereby dismiss the same with costs to the Respondent. Orders accordingly.

**Dated, signed and delivered at Bungoma this 3<sup>rd</sup> day of March 2026.**

**R.E. OUGO  
JUDGE**

**In the presence of:**

**Centrine Wekesa Wafula/ Appellant/ Applicant**

**Miss Wanyama - For the Respondent**

**Wilkister - C/A**