

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KILGORIS**  
**ELC E017 OF 2024**

**LEONARD LENANA KETERE.....1<sup>ST</sup>**  
**APPLICANT**

**VERSUS**

**SIMON LEBOO MORINTANT &4 OTHERS .....**  
**RESPONDENTS**

**RULING**

1. Upon consideration of the application by way of a Notice of motion dated 20<sup>th</sup> November 2025 seeking a stay of execution of the Ruling , taxation proceedings and the consequential orders by Hon. M. N. Mwanyale J issued on 6<sup>th</sup> of May 2025 in Kilgoris ELC E017 of 2024 pending hearing and determination of the Appeal; which application is based on grounds *interalia*, that the Applicant was granted Leave by the Court of Appeal to lodge an Appeal against the Ruling delivered on 5<sup>th</sup> of May 2025 which appeal raises arguable issues and the respondent is poised to enforce the said ruling and has commenced the process of execution by taxing costs the applicant shall stand to suffer if he pays the costs and his appeal eventually is successful which will render the appeal nugatory.
2. Upon perusal of the supporting affidavit of Leonard Lenana Ketere the Applicant, who in his depositions reiterates the grounds in support of the application and has annexed a copy of the Notice of Appeal, Copy of the Impugned Ruling, copy of the Ruling granting Him leave to Appeal, taxation notice and a Notice to Show cause
3. Upon also taking into consideration of the Statement of Grounds of Opposition which state, *interallia*, that the ruling made on 6<sup>th</sup> of May 2025 was a negative order as it struck out the Plaintiff's suit and hence it is incapable of being stayed, that the application does not meet the threshold of grant of Stay pending Appeal under order 42

rule 6 and offends section 27 of the Civil Procedure Rules, hence the same ought to be dismissed.

4. Upon further consideration of the depositions in the Further Affidavit which allude to the fact that the assertion that stay of execution orders cannot issue in respect of negative orders is a misconception the law, and that the Applicant has satisfied the Conditions for Grant of Stay of execution pending appeal.
5. Noting that when the matter came up for direction the parties were directed to file written submissions on the application and therefore taking note and cognizant of the Applicants submission, which he submits that he has met the conditions for grant of a stay pending Appeal and has submitted on each of the conditions under order 42 rule 6 of the Civil Procedure Rules separately and cited the following decisions in support of his submissions to wit, Mputhia vs Murithi 2025 KEHC 756 KLR, Butt vs Rent Restriction Tribunal 1982 KLR and urges the court to allow the Application. Taking into account that the Respondents did not file any submissions.

#### **Issues for Determination**

6. the court thus frames the sole issue for determination from the Application and the supporting and further affidavits thereto as well as the grounds of opposition and the submissions to be and after consideration of the law, to wit, whether or not the Application as filed is Legally tenable?.

#### **Analysis and Determination**

7. Taking note that the Ruling dated 6<sup>th</sup> of May 2025 in which the court struck out the Plaintiff suit for being Resjudicata was essentially a dismissal order hence a negative order. Can a stay of execution order issue in respect of a negative order as submitted by the Applicant?
8. Guided by various dictas of the courts including the Court of Appeal decision in Gitundu vs Wathuku (Civil Application E24 of 2021 which decision quoted the decision in Western College of Arts and Applied Sciences vs E.P. Oranya & 3 others on the issue of stay of negative

orders. In the Gitundu case, the Learned Judges stated **“Additionally even if we had the requisite jurisdiction, this Court has said time without number that stay orders cannot issue in respect of negative orders, where the Court has not ordered any of the parties to perform any task.”**

9. Now in realization that the application seeks to stay a negative order and that the general principle is that no stay of execution orders can issue in respect of negative orders, the court finds that the application is untenable. The court also takes notes of the deposition at paragraph 13 of the further affidavit deponed on 18<sup>th</sup> December 2025 in which the Applicant depones willingness to deposit half the decretal sum I court. The decretal sum herein being the assessed costs of Kshs 596, 844/= and interests thereon, the court in dismissing the Application dated 20<sup>th</sup> November 2025 orders the depositing of the entire award of costs in court within 21 days from date hereof. The Release of the said award of costs once it is deposited shall abide by the outcome of the pending appeal at the Court of Appeal.

10. Costs of the application are awarded to the Respondents.

Dated at Kilgoris this 9<sup>th</sup> day of March, 2026.

Hon. M.N Mwanyale  
Judge

**In the presence of**

CA -Sylvia/Sandra/Clara

Mr. Esang h/b for Mr. Mongeri for the Applicant

Mr. Langat for the Respondent