

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

ELECTION'S PETITION APPEAL NO. E001 OF 2023

(CORAM: HON. CHARLES M. KARIUKI – J)

LANKEMUA OLE NAIDUYA APPELLANT

VERSUS

I EBC1ST RESPONDENT

LILIAN VUGUTSA LILUMA,

RETURNING OFFICER KILGORIS CONSTITUENCY..... 2ND RESPONDENT NTOKOYUAN

SANGAU OLE3RD RESPONDENT

RULING

05/03/2026

Introduction

1. Before this Court is a Notice of Motion dated 4th September 2025 filed by the Applicant, Lankemua Ole Naiduya, in Election Petition Appeal No. E001 of 2023. The application is expressed to be brought under Sections 1A, 1B, and 3A of the Civil Procedure Act, Order 21 Rule 12(2) and Order 22 Rule 22 of the Civil Procedure Rules, and all other enabling provisions of the law.
2. The Applicant seeks orders of stay of execution of the taxed costs awarded to the 1st and 3rd Respondents pending the hearing and determination of the application and further

seeks leave to liquidate the said costs by way of joint monthly instalments of KSh 250,000/- for a period of eight (8) months. He also prays that the security deposit amounting to KSh 200,000/- deposited before this Court and the trial court be applied towards partial satisfaction of the taxed costs.

3. The application arises from taxation rulings delivered on 30 July 2025, in which the Taxing Officer assessed the 1st Respondent's Bill of Costs at KSh 996,002/- and the 3rd Respondent's Bill of Costs at KSh 976,617/-. A thirty (30) day stay of execution was granted contemporaneously with the rulings, which stay lapsed on 30 August 2025.
4. The Applicant depones that the taxed costs emanate from an election petition he had filed challenging the election of the 3rd Respondent as Member of County Assembly for Kimintet Ward. He states that he filed the petition in his capacity as an ordinary voter and private citizen. Although both the petition and the subsequent appeal were dismissed, he avers that the trial court found certain irregularities and recommended investigations by the Directorate of Criminal Investigations. He further states that the appellate court acknowledged that the appeal raised novel issues of law, particularly in relation to Section 87 of the Elections Act and Rule 12(13) of the Election Petition Rules.
5. The Applicant contends that the petition was not frivolous and contributed to the development of electoral jurisprudence. He expresses willingness to satisfy the taxed costs but avers that he is unable to pay the decretal sums in a lump sum owing to his limited financial means, stating that he is a local farmer without sufficient resources. He therefore urges the Court to permit payment by instalments and to apply the security deposit towards the decretal amount.

6. He further asserts that unless stay of execution is granted, the application will be rendered nugatory and he will suffer prejudice. He maintains that the application has been brought in good faith, without unreasonable delay, and that he is willing to abide by any conditions the Court may impose.

The Response.

7. The 1st Respondent filed a Replying Affidavit dated 6th October 2025, sworn by Chrispine Owiye, the Director, Legal Services of the 1st Respondent, the Independent Electoral and Boundaries Commission (IEBC).
8. The deponent acknowledges that the 1st Respondent was awarded costs in the sum of Kshs. 996,002 as indicated by the Applicant. He further depones that this Court, in issuing directions on the said application, ordered the Petitioner to deposit Kshs. 250,000 within thirty (30) days from 5th September 2025, thereby requiring compliance on or before 5th October 2025.
9. The deponent states that counsel on record for the 1st Respondent has not received any confirmation that the ordered deposit was made to the Court. It is therefore contended that, in the absence of such a deposit, the 1st Respondent remains at liberty to execute for the taxed costs in accordance with the Court's order. The deponent further avers that failure to comply with the deposit order renders the present application moot.
10. Additionally, the 1st Respondent contends that the Applicant has not placed before the Court any evidence to demonstrate inability or hardship in paying the full amount of Kshs. 996,002, the costs being lawfully due to the 1st Respondent. It is therefore deposed that there is no sufficient basis for the relief sought in the application.

11. On that basis, the 1st Respondent maintains that the application is an abuse of the court process and urges the Court to dismiss it with costs and to direct the Applicant to settle the full decretal amount. The deponent concludes by affirming that the facts deponed to are derived partly from his personal knowledge acquired in the course of his employment and partly from official records and information held by the 1st Respondent.

Grounds of opposition

12. The 3rd Respondent, Ntakoyuan Sangau Ole, filed Grounds of Opposition dated 18th September 2025 opposing the Applicant's Notice of Motion dated 4th September 2025.

13. In the said grounds, the 3rd Respondent contends that the Applicant has not satisfied the legal threshold for the reliefs sought. It is asserted that the Applicant is a man of means who has failed to tender any credible or verifiable evidence to demonstrate the inability to settle the decretal sum. The 3rd Respondent maintains that a bare allegation of financial hardship, unsupported by proof, is insufficient to warrant the Court's exercise of discretion in the Applicant's favour.

14. The 3rd Respondent further states that the application arises from a Bill of Costs taxed on 30th July 2025 following a judgment delivered by Hon. Justice F. Gikonyo, J., and that the dispute has been in litigation for over three years. It is contended that this prolonged litigation has subjected the 3rd Respondent to emotional and financial strain and that the Applicant has persistently sought to frustrate the enforcement of valid court judgments. The 3rd Respondent avers that he has been denied the fruits of favourable judgments both at the trial court and on appeal, and that the present application constitutes a misuse of the appellate process aimed at shielding the Applicant from meeting his lawful financial obligations.

15. Additionally, the 3rd Respondent argues that the decretal sum in issue is not substantial and is, in fact, below the statutory cap of Kshs. One million referenced in the judgment. It is therefore contended that the Applicant has not demonstrated that the amount is onerous or oppressive.
16. The 3rd Respondent also invokes the equitable principle that one who seeks equity must come with clean hands. It is argued that the Applicant, having benefited from multiple levels of litigation and now seeking to evade compliance with lawful decrees, is not entitled to the discretionary relief of the Court. The 3rd Respondent characterizes the application as a calculated delaying tactic intended to stall execution and undermine the finality and enforcement of court decisions.
17. In conclusion, the 3rd Respondent maintains that the application is frivolous, incompetent, vexatious, and devoid of merit, and that it offends the overriding objective of the civil process. The Court is therefore urged to dismiss the application with costs.

Applicant's Submissions

18. The Applicant filed written submissions dated 23rd October 2025 in support of the Notice of Motion dated 4th September 2025 seeking leave of the Court to settle the taxed costs awarded to the 1st and 3rd Respondents by way of instalments, together with an order for stay of execution.
19. The Applicant submits that the central issue for determination is whether he has met the threshold for the Court to exercise its discretion in his favour to permit payment of the decretal sums in instalments. The costs in question arise from rulings delivered on 30th July 2025, taxing the 1st Respondent's Bill of Costs at Kshs. 996,002 and the 3rd Respondent's Bill of Costs at Kshs. 976,617 following the dismissal of an election

petition challenging the election of the 3rd Respondent as Member of County Assembly for Kimintet Ward.

20. The Applicant contends that although the petition was unsuccessful, it raised substantial and novel legal questions, particularly concerning Section 87 of the Elections Act and Rule 12(13) of the Election Petition Rules, which were acknowledged by the appellate court in its judgment delivered by Hon. Justice F. Gikonyo. It is therefore argued that the petition was not frivolous and contributed to the development of electoral jurisprudence.
21. In urging the Court to allow payment by instalments, the Applicant relies on Order 21 Rule 12(2) of the Civil Procedure Rules, which empowers the Court, for sufficient cause, to order payment of a decretal sum by instalments. He cites the decision in ***Tarpa Industries Ltd v Picasso Products Ltd (2007) eKLR*** for the proposition that the judgment debtor's bona fides is the most important consideration in determining whether indulgence should be granted. Reliance is also placed on ***Shakespeare Investments & Another v Paul Kipsang Kosgei (2004) eKLR***, where the Court held that an applicant must demonstrate sufficient reason, considering his financial position, conduct, and good faith. Further reliance is placed on ***Koidungu Ole Shira v Julius Kiptingos (2022) eKLR***, where the Court adopted the criteria in ***Freight Forwarders Ltd v Elsek & Elsek (K) Ltd*** and emphasized that sufficient cause includes inability to pay in lump sum, ability to pay reasonable instalments, and utmost good faith.
22. The Applicant submits that he has satisfied these principles. He argues that he moved the Court promptly, within a month of taxation, without waiting for execution proceedings to commence, thereby demonstrating good faith. In this regard, he distinguishes his case from ***Swila Resorts Ltd v Universal Freight & Logistics (2012) eKLR***, where the Court

found lack of good faith due to inordinate delay and the absence of any proposal until execution was imminent. He further submits that his compliance with the Court's direction to deposit Kshs. 250,000—by instead depositing Kshs. 500,000—demonstrates willingness and commitment to settle the decretal sums. He maintains that the proposed instalments are reasonable and structured to ensure payment within a brief period.

23. On the issue of stay of execution, the Applicant invokes Order 22 Rule 22 of the Civil Procedure Rules and submits that he has shown sufficient cause, particularly his inability to pay the entire decretal amount in a lump sum. He further argues that the matter arises from an election petition, which implicates public interest, and that costs should not be applied in a manner that is punitive so as to deter bona fide litigants from ventilating legitimate electoral grievances. The Applicant contends that granting stay and permitting payment by instalments would serve the broader interest of justice and promote access to courts.

24. Finally, the Applicant urges the Court to enforce the direction made in the appellate judgment that the security deposit of Kshs. 200,000 held by the Court be applied towards satisfaction of the taxed costs. He submits that, once the security deposit and the sums already paid are factored in, the outstanding balance would be reduced, and that he undertakes to settle the same within the shortest time possible based on his financial ability.

25. On those grounds, the Applicant prays that the application be allowed in the interest of justice.

1st and 2nd Respondents' Submissions

26. The 1st and 2nd Respondents, namely the Independent Electoral and Boundaries Commission and the Returning Officer, Kilgoris Constituency, filed submissions dated 28th October 2025 opposing the Applicant's Notice of Motion dated 4th September 2025.
27. In their submissions, the Respondents recount that on 30th July 2025, the Taxing Officer delivered separate rulings taxing the 1st Respondent's Bill of Costs at Kshs. 996,002 and the 3rd Respondent's Bill of Costs at Kshs. 976,617. Following the filing of the present application, the Court granted temporary stay of execution on condition that the Applicant deposits Kshs. 250,000 within thirty (30) days from 5th September 2025, failing which the stay would automatically lapse.
28. The 1st and 2nd Respondents submit that the Applicant failed to comply with the terms of the conditional stay within the stipulated period. Although the Applicant subsequently deposited Kshs. 500,000, the Respondents contend that the payment was made outside the thirty-day timeline set by the Court and therefore in breach of the Court's order.
29. On the question of payment by instalments, the Respondents argue that the Applicant has not met the legal threshold for the Court's exercise of discretion. They submit that while the Applicant alleges financial hardship and claims to be a local farmer, he has not produced any credible or verifiable evidence of his alleged inability to pay the decretal sum in a lump sum. In particular, no bank statements, income records, affidavit of means, or other documentary proof have been tendered to substantiate the claim of financial incapacity. It is therefore contended that bare assertions of hardship are insufficient.
30. The Respondents further maintain that the taxed costs were lawfully assessed and awarded, and that the fact that the matter arising from public interest litigation does not exempt the Applicant from complying with valid court orders. They caution that allowing

instalments in the absence of proof of hardship would set an undesirable precedent and undermine the finality of court decisions.

31. Additionally, the Respondents submit that since filing the present application, the Applicant has not demonstrated goodwill by commencing payment of the proposed monthly instalments. They state that the 1st Respondent has not received any payment directly from the Applicant and express apprehension as to whether the Applicant would honour the proposed instalment plan.
32. In light of the foregoing, the 1st and 2nd Respondents urge the Court to find that the application lacks merit and to dismiss it with costs.

Third respondent's submissions.

33. The 3rd Respondent filed submissions dated 28th October 2025 opposing the Applicant's Notice of Motion dated 4th September 2025 seeking stay of execution and leave to settle the taxed costs by instalments.
34. The 3rd Respondent recounts that on 30th July 2025, the Taxing Officer delivered two separate rulings taxing the 1st Respondent's Bill of Costs at Kshs. 996,002 and the 3rd Respondent's Bill of Costs at Kshs. 976,617. It is submitted that although the Taxing Master initially granted a thirty-day stay, which lapsed on 30th August 2025, the Applicant subsequently moved the Court and obtained conditional stay orders requiring him to deposit Kshs. 250,000 within thirty days from 5th September 2025, failing which the stay would automatically lapse. According to the 3rd Respondent, the Applicant failed to comply within the stipulated period and only deposited Kshs. 500,000 after the lapse of time, thereby disregarding the Court's directions.

35. On the substantive prayer for payment by instalments, the 3rd Respondent submits that the Applicant has not satisfied the legal threshold for the Court's exercise of discretion under Order 21 Rule 12 of the Civil Procedure Rules. It is argued that the Applicant has not provided credible or verifiable evidence of financial incapacity, and that bare assertions of hardship are insufficient. The 3rd Respondent contends that the burden lies on the judgment debtor to demonstrate sufficient cause, including inability to pay in a lump sum and good faith, which threshold has not been met.
36. The 3rd Respondent further submits that the taxed costs arise from a judgment delivered by Hon. Justice F. Gikonyo, J., and that the litigation has spanned over three years, subjecting him to prolonged emotional and financial strain. It is contended that the Applicant has persistently sought to frustrate the enforcement of lawful court decisions, thereby depriving the 3rd Respondent of the fruits of both the trial court and appellate judgments. The present application is therefore characterized as a misuse of the appellate process intended to shield the Applicant from meeting his lawful obligations.
37. Additionally, the 3rd Respondent argues that the decretal sum is not substantial and is below the statutory cap of Kshs. One million referenced in the judgment. It is submitted that the Applicant has not demonstrated that the amount is onerous or oppressive. The 3rd Respondent invokes equitable principles, contending that the Applicant has not come to court with clean hands and cannot seek discretionary relief while in breach of prior court orders. Emphasis is placed on the maxim that equity aids the vigilant and not those who delay justice.
38. In conclusion, the 3rd Respondent submits that the application is a delaying tactic calculated to stall execution, frustrate enforcement, and undermine the finality of judicial

determinations. It is urged that the application is frivolous, vexatious, and an abuse of the court process, offending the overriding objective of the Civil Procedure Act, and should therefore be dismissed with costs.

Issues for Determination

39. Having considered the Notice of Motion dated 4th September 2025, the affidavits on record, the grounds of opposition, and the rival submissions by the parties, the issues that arise for determination are:

- i. Whether the Applicant has satisfied the legal threshold for the grant of stay of execution of the taxed costs.**
- ii. Whether the Applicant has established sufficient cause to warrant payment of the decretal sums by instalments under Order 21 Rule 12(2) of the Civil Procedure Rules.**
- iii. Whether the security deposit of KShs. 200,000 held by the Court should be applied towards satisfaction of the taxed costs.**

ANALYSIS AND DETERMINATION

(i) Whether the Applicant has satisfied the threshold for stay of execution

40. The prayer for stay of execution is anchored upon Order 22 Rule 22 of the Civil Procedure Rules and the inherent jurisdiction of the Court under Sections 1A, 1B, and 3A of the Civil Procedure Act. Although Order 22 Rule 22 primarily contemplates a stay by the court to which a decree has been sent for execution, the guiding principle remains that stay is a discretionary remedy to be exercised judiciously and upon sufficient cause being shown.

41. The Court of Appeal in **Butt v Rent Restriction Tribunal [1982] KLR 417** laid down the guiding principles for grant of stay, holding inter alia that the power to grant stay is discretionary; that such discretion should be exercised in a manner that does not render an appeal nugatory; and that the court should consider the interests of justice and the need to balance the rights of both parties.
42. Although the present matter arises post-judgment and post-taxation, the underlying rationale remains the same: The Court must balance the right of the successful party to enjoy the fruits of judgment against the need to ensure that execution does not occasion undue hardship or injustice.
43. In the present case, it is not disputed that the costs were taxed on 30th July 2025 and that an initial thirty-day stay lapsed on 30th August 2025. The Applicant subsequently obtained a conditional stay requiring a deposit of KShs. 250,000 within thirty days from 5th September 2025. The Respondents contend that the Applicant failed to comply within time. The Applicant, on the other hand, asserts that he deposited KShs. 500,000, albeit outside the prescribed period.
44. Non-compliance with conditional stay orders is a serious matter. In **Equity Bank Ltd v West Link MBO Ltd [2013] eKLR**, the Court of Appeal emphasized that a party seeking equitable relief must comply strictly with the conditions imposed by the Court. However, the Court also retains discretion to consider subsequent compliance and the broader interests of justice.
45. While the Applicant did not comply within the timeline, he eventually deposited a sum exceeding the amount ordered. That conduct, though irregular, demonstrates some degree of bona fides. In the circumstances and considering that the substantive issue is whether

payment by instalments should be allowed, the prayer for stay cannot be considered in isolation from that broader question.

46. Accordingly, stay of execution, if granted, must be conditional and tied to a structured and time-bound settlement framework to safeguard the Respondents' interests.

(ii) Whether sufficient cause has been shown to warrant payment by instalments

47. Order 21 Rule 12(2) of the Civil Procedure Rules provides that after passing of a decree for payment of money, the Court may, for sufficient reason, order that payment be postponed or be made by instalments. The power is discretionary and must be exercised judicially.

48. The principles guiding the exercise of that discretion were articulated in **Freight Forwarders Ltd v Elsek & Elsek (K) Ltd [2012] eKLR**, where the Court held that the applicant must demonstrate:

- a) inability to pay the decretal sum in a lump sum.
- b) ability to pay a reasonable proportion of the debt; and
- c) Good faith.

49. Similar principles were reiterated in **Koidungu Ole Shira v Julius Kiptingos [2022] eKLR**, where the Court emphasized that the bona fides of the judgment debtor is the most critical consideration.

50. Further, in **Shah v Mbogo [1967] EA 116**, it was held that judicial discretion is intended to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake, but not to assist a person who deliberately seeks to obstruct or delay the course of justice.

51. In the present case, the Applicant asserts that he is a local farmer of modest means and is unable to pay the decretal sum in a lump sum. However, no documentary evidence of

income, assets, liabilities, or financial position has been placed before the Court. Bare assertions of hardship, without more, are ordinarily insufficient.

52. Nevertheless, the Applicant deposited KShs. 500,000, which is a substantial portion of the decretal sums. That payment, though late, is indicative of a willingness to liquidate the debt. The total taxed costs amount to KShs. 1,972,619. When the KShs. 500,000 deposit and the KShs. 200,000 securities are considered; a sizable portion of the decretal amount stands covered.

53. The decretal sum, while below the statutory cap of KShs. One million per party in election petitions, is significant. The Court must also consider the constitutional context of election petitions, which implicate public interest and access to justice under Article 48 of the Constitution. Costs, though compensatory, should not operate punitively so as to deter bona fide litigants from ventilating electoral grievances.

54. Balancing all these factors, the Court is satisfied that sufficient cause has been shown to warrant structured payment by instalments, provided that the instalment plan is reasonable, definite, and time bound.

(iii) Whether the security deposit should be applied towards the satisfaction of costs

55. Section 78 of the Elections Act requires a petitioner to deposit security for costs. Once a petition is dismissed and costs awarded, such security is liable to be applied towards satisfaction of the costs.

56. In **Esposito Franco v Amason Kingi Jeffah & two others [2010] eKLR**, the Court affirmed that security for costs in election petitions is intended to guarantee payment of costs to successful parties and may be applied accordingly upon conclusion of proceedings.

57. In the present case, there is no dispute that a sum of KShs. 200,000 is held as security. There is therefore no legal impediment to applying that amount towards partial satisfaction of the taxed costs.

Conclusion

58. In the premises, the Court finds as follows:

- a) The Applicant has demonstrated sufficient cause to warrant conditional stay of execution.
- b) The Applicant has established adequate grounds for payment of the decretal sums by instalments under Order 21 Rule 12(2) of the Civil Procedure Rules.
- c) The security deposit of KShs. 200,000 shall be applied towards partial satisfaction of the taxed costs.

59. Consequently, the court makes orders.

- i. That execution of the taxed costs hereby stayed on condition that the outstanding balance, after accounting for the sums already deposited and the security for costs, shall be paid by way of instalments of equal amounts for a period of eight (8) months. In default of any one instalment, execution shall be issued forthwith without further reference to the Court.**

60. It is so ordered.

DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS

APPLICATION, THIS 5TH DAY OF MARCH 2026

.....

CHARLES KARIUKI

JUDGE