

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CIVIL CASE NO. 228 OF 2001

R.M. PATEL & PARTNERS LIMITED PLAINTIFF/APPLICANT

=VERSUS=

RIFT VALLEY AGRICULTURAL CONTRACTORS LIMITE

D.....DEFENDANT/RESPONDENT

Coram: Justice R. Nyakundi

M/S Nyachoti & Co. Advocates

M/S Gatonye & Gatonye Advocates

RULING

1. Before Court is a notice of motion dated 10th February 2026 expressed to have been brought under Order 45 Rules 1 & 2, Order 50 Rule 6, Order 51 Rule 1 of the Civil Procedure 10; Sections 1A,1B, 3A & of Kenya and all other enabling provisions of the law). The Applicant is seeking for orders:
 - (a) That this Application be and is hereby certified urgent, heard ex-parte in the first instance and service thereof be dispensed with.
 - (b) That pending the hearing and determination of this Application inter-parties, the Ruling and the subsequent Orders of Honourable Mr. Justice Reuben Nyakundi dated 5th January 2026 be and are hereby stayed.
 - (c) That pending the filing, hearing and determination of the Applicant's intended Appeal, the Ruling and the subsequent Orders of Honourable Mr. Justice Reuben Nyakundi dated 5th January 2026 be and are hereby stayed.
 - (d) That this Honourable Court do issue any such further and appropriate orders as it deems fit in the circumstances of this matter.
 - (e) That the costs of this Application be provided for.
2. Which application is anchored on the following grounds:

- (a) That the Plaintiff/Applicant ("the Applicant") filed an Application dated 28th July 2025 seeking orders for stay of execution of the Decree issued on 13th March 2025 pending the hearing and determination of an intended appeal against the Judgment delivered by the Honourable Mr. Justice Reuben Nyakundi on 25th November 2024.
- (b) That on 23rd October 2025, the Honourable Mr. Justice Reuben Nyakundi delivered a Ruling in respect of the Applicant's Application dated 28th July 2025 and issued the following orders:-
- (i) There shall be a stay of execution of the decree entered on 13th March, 2025 and all proceedings emanating therefrom, including the Warrants of Attachment and Sale dated 21st July, 2025, pending the hearing and determination of the intended appeal, subject to the following conditions:
 - a) As a condition for the stay, the Applicant shall, within 60 days from the date of this ruling, deposit the decretal sum of Kshs. 22,745,709/= (Twenty-Two Million, Seven Hundred and Forty-Five Thousand, Seven Hundred and Nine Shillings) in an interest earning account in a reputable financial institution, in the joint names of M/s Gatonye & Gatonye Advocates and M/s Nyachoti & Co. Advocates.
 - b) Alternatively, the Applicant may, within the same period of 60 days, furnish a bank guarantee from a reputable commercial bank in Kenya for the sum of Kshs. 22,745,709/= in favour of the Respondent, such bank guarantee to remain valid until the final determination of the appeal or further order of the court.
 - (ii) In the event the Applicant fails to comply with the conditions in paragraphs (i) or (ii) above within the stipulated period of 60 days, the stay of execution granted herein shall automatically lapse and the Respondent shall be at liberty to proceed with execution of the decree.
 - (iii) The costs of this application shall abide the outcome of the appeal."

(c) Thereafter, the Applicant filed the Application dated 15th December 2025 seeking an order of this Honourable Court for enlargement of time within which to comply with the said orders. On 18th December 2025, the Honourable Mr. Justice Reuben Nyakundi delivered a Ruling in respect of the Applicant's Application dated 15th December 2025 and issued, inter-alia, the following orders:-

a) That in light of the magnitude of the issues raised in the instant application and so as not to render it nugatory pursuant to Sections 1A, 1B, 3 and 3A of the Civil Procedure Act and Order 50 (1), (2), (3), (6) of the Civil Procedure Rules I exercise discretion *ex parte* in the first instance in favor of the Applicant to enlarge time for compliance with the Ruling of this Court to meet the threshold on the condition precedent to offer security for costs within the ambit of the decree to pave way for the issues raised be canvassed at the forum of *conveniens* as advanced by the Applicant."

(d) Immediately upon the issuance of the orders dated 23rd October 2025, the Applicant took prompt and concrete steps to comply therewith by engaging its bankers and is in the process of securing the requisite financial facilities, including a bank guarantee, to specifically meet the security requirement of Kshs. 22,745,709/= ordered by this Honourable Court.

(e) On 5th January 2026, the Honourable Mr. Justice Reuben Nyakundi delivered a Ruling in respect of the Defendant/ Respondent ("the Respondent")'s Application dated 28th November 2025 and issued the following orders:-

- i. That the Ruling of Honorable Justice R. Nyakundi dated 23rd October 2025 with all consequential orders be and is hereby reviewed to read KShs104,214,757/= as the decretal sum as opposed to KShs 22,745,709/=.
- ii. That the Judgment of Honourable Justice R. Nyakundi dated 25th November 2024 with the ensuing Decree be and is hereby reviewed by purging the apparent discrepancy as regards the costs of the

suit and counterclaim to read that the costs of the suit and counter claim are awarded to the Defendant.

iii. That there is no orders as to costs."

(f) The Applicant is aggrieved by the Ruling and intends to Appeal against the same to the Court of Appeal. In that regard, the Applicant filed and served a Notice of Appeal dated 15th January 2026 and requested for typed proceedings in a letter dated 15th January 2026.

(g) Unless the orders sought herein are granted the Applicant will be compelled to comply with the reviewed orders requiring the provision of security in the sum of Kshs. 104,214,757/= as opposed to the previously ordered sum of Kshs. 22,745,709/=:, thereby prematurely determining the very issue in dispute in the intended Appeal which would render the appeal nugatory.

(h) The Applicant is apprehensive that unless this Honourable Court intervenes, such compulsion will not only subject the Applicant to substantial and irreparable financial loss and damage by fundamentally disrupting the financial plan already structured and undertaken but will also effectively pre-empt and defeat the intended appeal, thereby rendering it nugatory and reducing it to a mere academic exercise.

(i) It is in the interest of justice that this Application is heard expeditiously, and the orders sought herein granted in order to avert the substantial loss that the Applicant stands to suffer and to avoid rendering the intended appeal nugatory.

(j) This Application has been brought without unreasonable delay.

(k) It is in the interest of justice that this matter be heard expeditiously, and the orders sought herein be granted.

(l) No loss or prejudice will be occasioned to the Respondent if the Orders sought herein are granted.

(m) This Honourable Court has the requisite jurisdiction and discretion to grant the orders sought herein taking into consideration all the above matters.

3. The application is supported by an affidavit sworn by the Applicant who deposed as follows:

- a) I am a director of the Plaintiff/Applicant ("the Applicant") herein fully conversant with the facts surrounding and/or pertaining to this matter- and I am duly authorized by the Applicant to swear this Affidavit on its behalf hence competent to do so.
- b) I have been advised by the Applicant's Advocates, Messrs Nyachoti & Company, which advice I verily believe to be true and correct, that the Applicant filed an Application dated 28th July 2025 seeking orders for stay of execution of the Decree issued on 13th March 2025 pending the hearing and determination of an intended appeal against the Judgment delivered by the Honourable Mr. Justice Reuben Nyakundi on 25th November 2024.
- c) I have been advised by the Applicant's Advocates aforesaid, which advice I verily believe to be true and correct, that on 23rd October 2025, the Honourable Mr. Justice Reuben Nyakundi delivered a Ruling in respect of the Application dated 28th July 2025 and issued the following orders:
 - i. There shall be a stay of execution of the decree entered on 13th March, 2025 and all proceedings emanating therefrom, including the Warrants of Attachment and Sale dated 21st July, 2025, pending the hearing and determination of the intended appeal, subject to the following conditions:
 - (a) As a condition for the stay, the Applicant shall, within 60 days from the date of this ruling, deposit the decretal sum of Kshs. 22,745,709/= (Twenty-Two Million, Seven Hundred and Forty-Five Thousand, Seven Hundred and Nine Shillings) in an interest earning account in a reputable financial institution, in the joint names of M/s Gatonye & Gatonye Advocates and M/s Nyachoti & Co. Advocates.
 - (b) Alternatively, the Applicant may, within the same period of 60 days, furnish a bank guarantee from a reputable commercial bank in Kenya for the sum of Kshs.

22,745,709/= in favour of the Respondent, such bank guarantee to remain valid until the final determination of the appeal or further order of the court.

- (ii) In the event the Applicant fails to comply with the conditions in paragraphs(i) or (ii) above within the stipulated period of 60 days, the stay of execution granted herein shall automatically lapse and the Respondent shall be at liberty to proceed with execution of the decree.
 - (iii) The costs of this application shall abide the outcome of the appeal."
- d) That the Applicant thereafter filed the Application dated 15th December 2025 seeking an order of this Honourable Court for enlargement of time within which to comply with the said orders. On 18th December 2025, the Honourable Mr. Justice Reuben Nyakundi delivered a Ruling in respect of the Applicant's Application dated 15th December 2025 and issued, inter-alia, the following orders:-
- (i) That in light of the magnitude of the issues raised in the instant application the Civil Procedure Act and Order 50 (1), (2), (3), (6) of the Civil Procedure to enlarge time for compliance with the Ruling of this Court to meet the of the decree to pave way for the issues raised be canvassed at the forum of conveniens as advanced by the Applicant."
- e) That immediately upon the issuance of the orders dated 23rd October 2025, the Applicant took prompt and concrete steps to comply therewith by engaging its bankers and is in the process of securing the requisite financial facilities, including a bank guarantee, to specifically meet the security requirement of Kshs. 22,745,709/= ordered by this Honourable Court.
- f) That on 5th January 2026, the Honourable Mr. Justice Reuben Nyakundi delivered a Ruling in respect of the Defendant/Respondent ("the Respondent")'s Application dated 28th November 2025 and issued the following orders:-

(i) that the Ruling of Honourable Justice R. Nyakundi dated 23rd October, 2025 with all consequential orders be and is hereby reviewed to read KShs104,214,757/= as the decretal sum as opposed to Kshs 22,745,709/=.

(ii) That the Judgment of Honourable Justice R. Nyakundi dated 25th November, 2024 with the ensuing Decree be and is hereby reviewed by purging the apparent discrepancy as regards the costs of the suit and counterclaim to read that the costs of the suit and counterclaim are awarded to the Defendant.

(iii) That there is no orders as to costs.

- g) That the Applicant is aggrieved by the Ruling and intends to Appeal against the same to the Court of Appeal. In that regard, the Applicant filed and served a Notice of Appeal dated 15th January 2026 and requested for typed proceedings in a letter dated 15th January 2026.
- h) That unless the orders sought herein are granted the Applicant will be compelled to comply with the reviewed orders requiring the provision of security in the sum of Kshs. 104,214,757/= as opposed to the previously ordered sum of Kshs. 22,745,709/=, thereby prematurely determining the very issue in dispute in the intended Appeal which would render the appeal nugatory.
- i) That the Applicant is apprehensive that unless this Honourable Court intervenes, such compulsion will not only subject the Applicant to substantial and irreparable financial loss and damage by fundamentally disrupting the financial plan already structured and undertaken but will also effectively pre-empt and defeat the intended appeal, thereby rendering it nugatory and reducing it to a mere academic exercise.
- j) That It is in the interest of justice that this Application is heard expeditiously, and the orders sought herein granted in order to avert the substantial loss that the Applicant stands to suffer and to avoid rendering the intended appeal nugatory.
- k) That this Application has been brought without unreasonable delay.

- l) That it is in the interest of justice that this matter be heard expeditiously, and the orders sought herein be granted.
- m) THAT no loss or prejudice will be occasioned to the Respondent if the Orders sought herein are granted.
- n) That this Honourable Court has the requisite jurisdiction and discretion to grant the orders sought herein taking into consideration all the above matters.
- o) That what is deponed to herein above is true to the best of my knowledge and belief, save as to matters deponed to on information sources whereof have been disclosed and matters deponed to on belief the grounds whereupon have been given.

4. In opposition to the entire application the Respondent Defendant averred and solemnly swore challenging the perspective taken by the Applicant/Intended Appellant to this application. As a matter of a recap the following extractive paragraphs which give the historical litigation of the entire dispute has been referenced as herein under:

- a) That I am a male adult of sound mind, one of the Directors of the Defendant and, being well-conversant with the facts precipitating the suit herein, I am competent to swear this affidavit.
- b) That I have been duly authorized and sufficiently instructed by the Defendant to swear this affidavit on its behalf in firm opposition to the Plaintiff's application dated 10th February, 2026 (subject application) seeking, among others, a stay of execution of the Ruling dated 5th January, 2026 delivered herein.
- c) That on the counsel of the Defendant's Advocates, which counsel I verily believe to be good, I wish to state from the outset that the subject application is incompetent, frivolous, lacking in merit and ought therefore to be struck out or dismissed with costs.
- d) That on 23rd October, 2025, the Honourable Court delivered a Ruling on the Plaintiff's application dated 28th July, 2025 for stay of execution pending appeal. In granting conditional stay of execution pending appeal,

the Court directed the Plaintiff to, within Sixty (60) Days, deposit "the decretal sum of Kshs 22,745,709/=" in an interest-earning account in a reputable financial institution in the joint names of the parties' Advocates or, in the alternative, to furnish a bank guarantee from a reputable commercial bank for the sum of Kshs 22,745,709/=.

- e) That vide the application dated 28th November, 2025, the Defendant moved the Court to review the Ruling of 23rd October, 2025 on the ground that there was an error on the face of the record in that the decretal sum was quoted as Kshs 22,745,709/= as opposed to KShs 104,214,757/= as per the Warrant of Attachment issued by the Court.
- f) That in the Ruling dated 5th January, 2026 (impugned Ruling), the Court acknowledged the existence of an error on the face of the record and, inter alia, corrected the error by quoting the decretal sum as KShs 104,214,757/=.
- g) That it is quite astounding that the Plaintiff has not only sought to appeal against a correction of an error on the face of the record but is now, through the subject application, seeking to suspend the said correction.
- h) That the Defendant's Advocates on record advise me, which advice I consider quite sound, that, it is quite absurd for the Honourable Court herein, being best-placed to identify an error by itself on the face of the record, having acknowledged the existence of said error and having corrected it, to be called upon to stay the correction of said error and, in effect, reinstate the identified and acknowledged error.
- i) That I am further advised that the impugned Ruling is not capable of being stayed as it is not comprised of any positive order.
- j) That be that as it may, the Defendant's Advocates on record soundly advise me that the subject application does not meet the mandatory conditions required to be satisfied before grant of stay of execution pending appeal. The following instances are instructive:-
 - a. The subject application has been made after unreasonable and inordinate delay. The impugned Ruling was made on 5th January, 2026. Consider the following:-

- i. If the Plaintiff had knowledge of the impugned Ruling on the date of its delivery, then the period of over Thirty (30) Days from the date of the impugned Ruling to the date of the subject application constitutes unreasonable and inordinate delay;
- ii. Assuming the Plaintiff got wind of the impugned Ruling on 15th January, 2026 when it filed the Notice of Appeal against it (HRP 4), then the period of over Twenty Five (25) Days from the said date to the date of the subject application constitutes unreasonable and inordinate delay;

b. No harm or loss, substantial, irreparable or otherwise, will be suffered by the Plaintiff should stay of execution pending appeal be denied. The following facts are relevant in that respect:

- i. The Plaintiff already has in its favour stay of execution of the Decree herein pending determination of its appeal against the Judgment herein.
- ii. The impugned Ruling merely rectified an error on the face of the record by clarifying the amount to be deposited in an interest-bearing account in the joint names of the Advocates on record and/or the amount subject of the bank guarantee to be issued as a condition for stay of execution. No funds are payable to the Defendant at this point to support the Plaintiff's argument that it will suffer substantial loss or have its appeal rendered nugatory.

c. If the Plaintiff's conduct is anything to go by, especially considering it is yet to comply with the conditional stay order initially granted, it is quite probable that, in the unlikely event Your Lordship allows the subject application, the Plaintiff will still not comply with the conditions imposed by the Court.

k) That it is also pertinent to note that despite the Court having granted the Plaintiff a 60-day extension of the period for its compliance with the conditions for stay of execution and despite the said period having lapsed

on 18th February, 2026, over One Hundred and Thirty (130) Days later, the Plaintiff is yet to meet the original conditions of stay of execution. I am very much persuaded that the subject application is just one of the tactics employed by the Plaintiff to curtail my enjoyment of the fruits of Judgment. I humbly ask Your Lordship to refuse to be hoodwinked in that regard.

- l) That I urge the Honourable Court to halt the Plaintiff's attempt to defeat justice, disguised as yet another application for stay of execution, by dismissing the subject application.
- m) That I swear this affidavit in vehement opposition to the Plaintiffs application dated 10th February, 2026.

5. In addition to the other evidential materials filed this Court is privy to the supplementary affidavit which states as follows:

- a) That I am a director of the Plaintiff/Applicant ("the Applicant") herein fully conversant with the facts surrounding and/or pertaining to this matter and I am duly authorized by the Applicant to swear this Affidavit on its behalf hence competent to do so.
- b) That I reiterate and adopt the entire contents of my Affidavit sworn on 10th February 2026, in support of the Application herein dated 10th February 2026 and add thereto as follows:
- c) That following the Ruling delivered by this Honourable Court on 5th January 2026, the Applicant, being dissatisfied therewith, filed a Notice of Appeal dated 15th January 2026, together with a letter of even date requesting for typed proceedings, which are annexed to my Supporting Affidavit sworn on 10th February 2026 and filed herein on even date in support of the Application.
- d) That I have been advised by the Applicant's Advocates Messrs Nyachoti & Company which advice I verily believe to be true and correct, that the Applicant has an arguable Appeal with good prospects of success on the following grounds:-

- i. That the learned Judge erred in law and fact by exercising the power of review under Order 45 of the Civil Procedure Rules, 2010 in the absence of an error apparent on the face of the record.
- ii. That the learned Judge erred in law and fact by holding that his earlier determination on the quantum of security pending appeal constituted an error apparent on the face of the record, notwithstanding that the said determination was an exercise of judicial discretion, incapable of amounting to an error apparent on the face of the record and therefore not amenable to review.
- iii. That the learned Judge erred in law and fact by failing to appreciate that the Respondent's disagreement with the manner in which discretion was exercised and/or the quantum of security ordered, did not constitute a ground for review and could only be subjected to appeal.
- iv. THAT the learned Judge erred in law and fact by invoking the review jurisdiction as a substitute for an appeal and in effect sitting on appeal on his own discretionary ruling.
- v. That the learned Judge erred in law and fact in treating the security required under Order 42 Rule 6(2)(b) of the Civil Procedure Rules, 2010 as equivalent to the entire judgment sum inclusive of interest and costs, thereby misapprehending the purpose of security, which is to safeguard the due performance of the decree pending appeal and not to compel upfront satisfaction of the whole decretal amount.
- vi. That the learned Judge erred in law and fact in relying on the sum reflected in the Warrants of Attachment and Sale dated 21st July 2025 despite the fact that the said Warrants formed part of the proceedings that had been expressly stayed by the ruling dated 23rd October 2025, thereby failing to appreciate that the stay rendered the Warrants of Attachment and Sale dated 21st July 2025 inoperative and incapable of forming the basis for determining the quantum of security pending appeal.
- vii. That the learned Judge erred in law and fact by substantially altering the conditions of stay of the Decree issued on 13th March 2025 after the

Applicant had already acted upon and structured its compliance based on the orders issued on 23rd October 2025 and 18th December 2025, thereby occasioning prejudice and procedural unfairness to the Applicant.

viii. That the learned Judge erred in law and fact by allowing the Respondent's Application for review dated 28th November 2025.

e) That the intended Appeal will be rendered nugatory if an order of stay of the Ruling dated 5th January 2026 is not granted as prayed on the grounds *inter-alia*, that the Applicant will be compelled to furnish security in the revised sum prior to the hearing and determination of the Appeal, which compulsion will render the intended Appeal nugatory and reduce it to a mere academic exercise as the very question to be determined by the Court of Appeal will have been conclusively acted upon.

f) That there is no prejudice that will be occasioned to the Respondent if the orders sought in the Application dated 10th February 2026 are granted.

g) That it is in the interests of justice that the Application dated 10th February 2026 be allowed and the orders sought therein be granted so as to preserve the substratum of the intended Appeal and prevent it from being rendered nugatory.

h) That what is deponed to herein above is true to the best of my knowledge, information and belief, save as to matters deponed to on information sources whereof have been disclosed and matters deponed to on belief the grounds whereupon have been disclosed.

6. In support of this application Learned Counsel Mr. Nyachoti further invited this Court to appreciate the principles so as to exercise discretion to grant stay of execution to facilitate the Applicant to exercise its constitutional right of appeal. With regard to this matter Learned Counsel placed reliance on the following authorities:

*National Bank of Kenya Ltd v Njau [1997] KECA 71 (KLR),
Kenya Medical Association Housing Co-operative Society Limited
v Coast Neurolog Center Limited [2022] KEHC 11752 (KLR),
Muyodi vs Industrial and Commercial Development Corporation &
another [2006] 1 EA 243, Ndirangu v Ndiritu [2025] KEHC 7334*

(KLR), *Lakesteel Supplies vs Dr. Badoa and anor Kisumu HCCC No. 191 of 1994*, *Butt v Rent Restriction Tribunal [1997] KECA 22 (KLR)*, *Brett, Wilson v Church (No. 3) 12 Ch D (18790 454 at p 459, Erinford Properties Limited v Cheshire County Council [1974] 2 ER 448 at p 454, HE V SM [2020] KEHC 4533 (KLR)*, *RWW vs EKW [2019] eKLR* and *James Wangalwa & Another v Agnes Naliaka Cheseto [2022] KEHC 1094 (KLR)*.

7. The Appellant Learned Counsel is challenging the impugned ruling with regard to exercise of review jurisdiction under Section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules. The insights of this is a matter for the domain of the Court of Appeal.

Resolution

8. The question for this Court is whether the Applicant has met the criteria of granting stay of execution of the impugned ruling to pave way for it to move the Court of Appeal for a remedy. The law at this level of Courts remains Order 42 Rule 6 of the Civil Procedure Rules as it may be construed with Section 1(A), 1(B), 3, & 3(A) of the Civil Procedure Act.
9. In this area of law authorities abound which guide the judicial discretion of the Court. In the case of **Madhupaper v Crescent Constructions, Nairobi Civil Application No. 60 of 1990** it was held:

“It is not normal for a Court to grant stay of execution in monetary decrees but whether there are special features such as the issue of the regularity of the judgment, the fact that the amount payable under the decree being substantial and the fact that the Plaintiff has no known assets within the jurisdiction from which the Applicant can recoup in event that its appeal is successful.

*Similarly the Court in **Consolidated Marine v Nampijja and Another, Nairobi Civil Application Number 93 of 1989** it was observed, “That the purpose of the application for stay of*

execution pending appeal is to preserve the subject matter in dispute so that the right of the Appellant who is exercising his undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. The other aspect to consider is whether the intended Appellant would suffer substantial loss if stay is not granted.”

10. In this province of the area on stay of execution discretion is wide and unfettered just with a rider that the threshold principles are now well settled as can be appreciated in the case of **Cotecna Inspection SA v Hems Group Trading Company Limited, Nairobi Civil application No. 303 of 2000** the Court remarked that it is the discretion of the Court to grant or refuse stay but what has to be judged in every case is whether there are or not particular circumstances in the case to make an order staying execution. It has been said that the Court as a general rule ought to exercise its discretion in a way so as not to prevent the appeal if successful from being nugatory.

11. In summary, the major principles upon which the Court can exercise discretion to grant a stay of proceedings or execution of judgment pending appeal are as follows:

- a) There must be a pending appeal;
- b) The appeal must be competent and arguable on its merits;
- c) A stay of proceedings will be granted to preserve the res;
- d) Where a stay of proceedings will cause greater hardship than when it is refused, the Court will not grant it;
- e) Where a stay is likely to render the rights sought to be protected null and void, it will be refused;
- f) Where an appeal raises issue of jurisdiction, it is a strong factor in support.

12. Applying the foregoing principles to the present application the strongest consideration appears to be that given the fundamentals of this long protracted suit the Court is mandated to exercise judicial discretion by carrying out a balancing act based on the various factors

as discussed in the decisions made reference to elsewhere in this ruling. It is a delicate balance notwithstanding the constitutional imperative on the right of appeal to any litigant who is aggrieved with a decision of an inferior Court.

13. The last question to ask is whether solid ground has been put forward requiring stay of execution. In my view, on matters of this nature, it will usually require an Applicant or intended Appellant to show some irretrievable harm which is an evidential burden by the Applicant. One of such risk factor is for the Court to consider if stay is denied the appeal will be stifled. In my view this is a money decree and in a money decree involving the Applicant and the Respondent company with huge sums of money proposed in the decree as being the fruits of the judgment in favour of the Respondent to this application.

14. This Court distilling the factual matrix of the case is also ordained by the persuasive principles governing stay pending appeal in the of **S.M. Rasha Maudarbocus & Anor (2019 SCJ 118)** it was held:

"In an application for stay of execution, there are competing interests which have to be weighed. On the one hand the winning party should not, without good reason, be prevented from benefiting from the fruits of judgment pronounced by the Judge after due process of law...On the other hand, the losing party should not as far as possible be deprived, in the exercise of his legitimate right to appeal against the judgment, of any possible outcome in his favour, on appeal. An order for stay of execution is within the court's discretion and the Judge has to try as far as possible, to adopt the course that will enable the appellate court to do justice between the parties whatever the outcome of the appeal".

15. Ultimately in this respect, the approach I take is one which accords with the interest of justice as a criterion of invoking judicial discretion of this Court. In terms of the law judicial discretion refers to the power of a Judge or Magistrate make decisions based on their judgment and conscience, rather than on rigid, mandatory rules particularly in areas

like sentencing, granting injunctions, stay of execution or managing Court procedures.

16. The Learned Authors **Sa De Smith and Jm Evans (eds), De Smith's Judicial Review of Administration Action (4th Ed, 1982) 278** addressed themselves on the issue that judgment is not upon all occasions required, but discretion always is. *Essentially discretion is the power or right to make official decisions using reason and judgment to choose from among acceptable alternatives. Judicial discretion is a very broad concept because of the different kind of decisions made by Judges within the same given circumstances. The exercise of discretionary power conferred on a Judge is omnipotent in judicial proceedings. Some degree of discretion is unavoidable because Legislature cannot foresee every eventuality which may come in judicial proceedings. The term judicial discretion has nowhere been defined in the statutes though it is exercised regularly by courts of law. It is exercised when a Judge is conferred a power under a Statute that requires the Judge to choose between several different, but equally valid, courses of action.*

17. Keeping in view of the recognized principles and other factors as discussed above on grant of stay of execution pending an appeal I find that there is cogent evidence as per the facts presented by the parties to exercise discretion to grant the following orders:

- a) *That a declaration be and is hereby made that stay of execution of the impugned ruling of this Court dated the 5th January 2026 be allowed.*
- b) *That the costs of this application abide the outcome of the intended appeal before the Court of Appeal.*

18. Orders accordingly.

SIGNED, DATED AND DELIVERED AT ELDORET THIS 10TH DAY OF MARCH 202

6.

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R. NYAKUNDI

JUDGE

In the presence of:

Mr. Nyachoti Advocate for the Applicant