



**Baya Savings & Credit Co-operative Society v Olwal (Civil Appeal
E054 of 2025) [2026] KEHC 3410 (KLR) (Civ) (26 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 3410 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
CIVIL
CIVIL APPEAL E054 OF 2025
WA OKWANY, J
FEBRUARY 26, 2026**

BETWEEN

BAYA SAVINGS & CREDIT CO-OPERATIVE SOCIETY APPELLANT

AND

ROMEO OLWAL RESPONDENT

RULING

1. This ruling is in respect to the Notice of Motion dated 21st October 2025 wherein the Appellants/ Applicants seek orders for stay of execution of the decree of the Co-operative Tribunal dated 9th October 2024 pending appeal. They also seek orders to restrain against arrest of the 2nd to 5th Appellants, and leave for the 1st Appellant to liquidate the decretal sum by way of instalments.
2. The application is supported by affidavits sworn by Gerry Wabuke and the 2nd Appellant and is opposed by the Respondent through a Replying Affidavit sworn on 29th October 2025.
3. The Application was canvassed by way of written submissions which I have considered.
4. I find that the main issue for determination is whether the Applicants have made out a case for the granting of the orders sought in the application.
5. Order 42 Rule 6(2) of the Civil Procedure Rules, provides as follows:

“No order for stay of execution shall be made... unless— (a) the court is satisfied that substantial loss may result to the applicant unless the order is made... (b) the application has been made without unreasonable delay; and (c) such security as the court orders... has been given by the applicant.”



6. The principles governing the granting of orders for stay pending appeal were succinctly stated in *Butt vs. Rent Restriction Tribunal* [1979] eKLR, where the Court of Appeal held:

“The power of the court to grant or refuse an application for stay of execution is discretionary... The general principle is that a successful litigant is entitled to the fruits of his judgment...”
7. Similarly, in *Kenya Shell Limited vs. Benjamin Karuga Kibiru & another* [1986] KLR 410, the Court held:

“Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”
8. The Appellants contend that execution would cripple the 1st Appellant Sacco and that its officials face arrest. They have demonstrated part-payment of Kshs. 415,105.85 and filed an Affidavit of Means. I note that the application was filed without undue delay.
9. The Appellants have however, not offered concrete security for the due performance of the decree. Mere assertions of financial hardship do not suffice. In *Kenya Shell case* (supra) the Court emphasized that financial difficulty alone is not substantial loss unless it renders the appeal nugatory.
10. Balancing the competing interests, I find that conditional stay is appropriate to preserve the substratum of the appeal while safeguarding the Respondent’s decree.
11. On whether an order to restrain the arrest of the 2nd to 5th Appellants should be issued, I note that execution by arrest is sanctioned under Section 38 of the *Civil Procedure Act*, which provides that a decree may be executed “by arrest and detention in prison of any person...”
12. Such execution must however, comply with due process.
13. The 1st Appellant is a duly registered co-operative society. Section 12 of the *Co-operative Societies Act* (Cap 490) stipulates that:

“The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and a common seal...”
14. It is trite that a body corporate is a distinct and separate legal entity from its members. The doctrine of separate legal personality, as established in *Salomon vs. A Salomon & Co Ltd* [1897] AC 22, provides that the company is at law a different person altogether from the subscribers.
15. In the present case, there is no evidence to show that the corporate veil has been lifted or that personal liability has been established against the 2nd to 5th Appellants. The decretal sum arises from obligations of the Sacco.
16. Accordingly, I find that execution against individual officials without specific findings of personal liability would be improper at this stage pending appeal.
17. On whether this court has jurisdiction to allow payment by instalments the Respondent argued that such jurisdiction lies only with the Tribunal under Order 21 Rule 12 of the Civil Procedure Rules, which provides that where and in so far as a decree is for the payment of money, the court may order that payment be postponed or be made by instalments.



18. As an appellate court seized of the matter, this Court retains inherent jurisdiction under Section 3A of the *Civil Procedure Act* to make such orders as may be necessary for the ends of justice.
19. The discretion under Order 21 Rule 12 must be exercised judicially. In *Keshvaji Jethabhai & Bros Ltd vs. Saleh Abdulla* [1959] EA 260, it was held that the power to order instalments should consider the circumstances of the debtor, his conduct, and the bona fides of his proposal.
20. In the present case, I note that the Appellants have made substantial part-payments and proposed a structured plan. It is however instructive to note that the Respondent has been kept from his funds since 2021.
21. I find that in the circumstances of this case, justice demands a structured and time-bound framework for the payments.
22. Having considered the application, affidavits, submissions, and the applicable law, I make the following orders:
 - a. There shall be stay of execution of the decree of the Co-operative Tribunal dated 9th October 2024 pending hearing and determination of the appeal, on condition that:
 - i. The Appellants deposit Kshs. 300,000 in a joint interest-earning account in the names of the parties' advocates within thirty (30) days; and
 - ii. The balance be secured by a bank guarantee within the same period.
 - b. Pending determination of the appeal, the Respondent is restrained from executing warrants of arrest against the 2nd to 5th Appellants.
 - c. Without prejudice to the appeal, the 1st Appellant shall continue paying monthly instalments of Kshs. 100,000 commencing 30 days from the date hereof until further orders of the Court.
 - d. In default of compliance with any of the above conditions, the stay shall lapse automatically.
 - e. Costs of the application shall abide the outcome of the appeal.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF FEBRUARY, 2026.

HON. W. A. OKWANY

JUDGE

26/02/2026

For Appellant

For The Respondent

Court Assistant Ubah

