

b) *Spent*

c) That this Honourable Court be pleased to stay execution of the judgment delivered on 13th November 2025, by Hon. Mugendi Nyaga in **Etago MCELRC NO. E001 OF 2025 Sarah Kemunto Ondari v The Board of Management St. Peters Nyangweta Secondary School**, pending hearing and determination of the appeal;

d) That this Court do issue such further orders as may serve the interests of justice in the circumstances; and

e) That costs of and incidental to this application abide by the outcome of the appeal.

2. The application is premised on the grounds set out on its face and supported by the affidavit of Mr. Felix Onsase Ogendo, the Appellant's Board of Management Chairman. He deposes that the Appellant has already lodged an appeal with high chances of success and is presently awaiting certified proceedings and a certificate of costs to enable it file the record of appeal. He further avers that, unless stay is

granted, the Appellant will suffer substantial loss owing to the large decretal amount, which would cripple its operations and ultimately impede the students' right to education. He also notes that the thirty-day stay granted on the date of judgment is on the verge of lapsing and, absent further orders of stay, the intended appeal will be rendered nugatory.

3. In opposition to the motion, the Respondent filed a Replying Affidavit on 14th January 2026, indicating that she does not oppose the application for stay on condition that the Appellant deposits the decretal amount in court within thirty days, failing which execution should issue.

4. On 20th January 2026, the Court directed the parties to file written submissions within seven days. Only the Appellant complied with those directions.

Appellant's Submissions

5. The Appellant submits that it has satisfied the threshold for the grant of stay of execution as provided under Order 42 Rule 6 of the Civil Procedure Rules, asserting that the

purpose of stay is to preserve the subject matter of litigation so as to safeguard the right of appeal. On the merits of the appeal, the Appellant contends that it raises weighty and arguable grounds, as reflected in the Memorandum of Appeal annexed to the supporting affidavit. It therefore maintains that, unless stay is granted, the appeal will be rendered merely academic, thereby exposing it to significant prejudice. With regard to the requirement for security, the Appellant urges the Court to exempt it from depositing the decretal sum. It asserts that, as a public institution funded from public resources, such an order would adversely affect innocent students and the public at large. It further contends that Order 42 Rule 8 of the Civil Procedure Rules exempts public institutions from providing security. The Appellant points to the fact that it is established and operated by the Government through the Ministry of Education pursuant to section 43(1)(a) of the Basic Education Act. In support of its position, it cites the case of **Methodist Church of Kenya Registered Trustee v Attorney General & 8 others [2014] KEHC 6174 (KLR)**, where the Court held that, under Order 42 Rule 8, the Government is exempt from providing

security as a condition for the grant of stay. It also submits that the Respondent has not demonstrated that the Appellant would be unwilling or unable to satisfy the decree if the appeal fails.

6. On the question of substantial loss, the Appellant reiterates that enforcement of the decree would prejudice innocent students whose right to basic education may be compromised. It maintains that payment of the decretal sum would severely disrupt its operations, to the detriment of the public interest it serves.

Disposition

7. The Appellant seeks a stay pending appeal. The parameters for grant of stay pending appeal are as captured in Order 42 of the Civil Procedure Rules. Briefly put, an applicant for stay of execution of a decree or order pending appeal is obliged to satisfy the conditions set out in Order 42 Rule 6(2), namely (a) that substantial loss may result to the applicant unless the order is made, (b) that the application has been made without unreasonable delay, and (c) that such security

as the court orders for the due performance of such decree or order as may ultimately be binding on the applicant has been given.

8. In the Application before me, the decretal sum is one that would occasion substantial loss to the Appellant/Applicant. The motion before the Court was made without undue delay. That disposes of the first two conditions for grant of an order of stay. The last aspect of the considerations of factors to guide a court when granting stay is the issue of security. Order 42 makes provision that there must be such security as the court orders for the performance of the decree. Under Order 42 Rule 8 of the Civil Procedure Rules, the Government is inured against an order to provide security for costs. Given that is the position of the law and the fact that the Appellant/Applicant herein is a School that is funded by taxpayers and fits into the prism of Government in the wider sense.

9. The order that commends itself for the Court to make is that there be a stay pending appeal with no order for security for

costs. The costs in respect of this motion are to abide the outcome in the Appeal.

It is so ordered.

Dated and delivered at Kisii this 23rd day of February

2026

**Nzioki wa Makau, MCI Arb.
JUDGE**

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