

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL COURTS**  
**COMMERCIAL & TAX DIVISION**  
**HCCC NO. E164 OF 2024**

**GEMINIA INSURANCE CO.**  
**LTD.....PLAINTIFF**

**-VS-**

**UNITED PHARMA (K)**  
**LIMITED.....1<sup>ST</sup> DEFENDANT**

**SAID HASHI**  
**ADAM.....2<sup>ND</sup>**  
**DEFENDANT**

---

**RULING**

- 1.The significant order sought by the defendants/ applicants in the notice of motion dated 19.2.2025 is; stay of execution of the order and decree emanating from the ruling dated 24.1.2025 by **Hon. Musyoki J.** pending their intended appeal.
- 2.The application is brought under **Order 42 Rule 6 of the Civil Procedure Rules**. It is supported by the affidavit sworn by **Abdullahi Hashi** on 19.2.2025 and written submissions dated 12.3.2025.
- 3.The plaintiff/ respondent opposed the application through a replying affidavit sworn by its company

secretary and head of legal, **Nelly Mwathi** on 5.3.2025 and written submissions dated 12.6.2025.

### **Applicant's case**

4.The applicants' case is that they have lodged a notice of appeal against the ruling and desire to appeal the whole ruling. They submitted that the intended appeal raises serious triable issues. They also submitted that the execution of the decree will cause it substantial and irreparable loss as it would cripple the 1<sup>st</sup> defendant's business operations and expose the 2<sup>nd</sup> defendant to severe financial hardship.

5.The applicants contended that the appeal would be rendered nugatory if a stay is not granted as execution may be carried out before the appeal is heard and determined.

6.The applicants indicated their willingness to provide security for the due performance of any decree that may ultimately be binding upon them.

### **Response**

- 7.The respondent argued that the applicants have not met the threshold for the grant of a stay pending appeal. It also argued that substantial loss is the cornerstone of the court's jurisdiction to grant stay. That the applicants are bound to present specific details and particulars that they stand to suffer substantial loss. That the mere fact that the execution process has been commenced does not constitute substantial loss.
- 8.The respondent asserted that the applicants' claims of crippling of business operations and exposure to financial hardship are unsubstantiated.
- 9.The respondent added that the applicants have not shown that it is financially incapable of refunding them in the event their appeal succeeds. It went on to state that it is a leading financial institution with means. That it is the one that risks not recovering the sum due.
- 10.The respondent contended that from the onset, the applicants attitude has been to avoid paying the decretal sum.

### **Analysis and determination**

11. This court has jurisdiction to grant stay of execution pending an appeal once a Notice of Appeal has been given under the Rules of the Court of Appeal. **Rule 42(4) of the Civil Procedure Rules.**

12. The power is however, discretionary- exercised upon principles and not on whims or caprice, and upon considering the circumstances of a case.

13. The court appealed from 'may for sufficient reason order stay of execution of...decree' appealed from. But, no order of 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 and that the application has been made without unreasonable delay; and (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.' **Order 42 Rule 6 of the Civil Procedure Rules.**

14. The critical questions raised by the applicants are that; the court entered summary judgment under

**Order 36 Rule 1 of the Civil Procedure Rules**

yet they filed their defence and counterclaim; without addressing its counterclaim; and despite the respondent's non-disclosure of two other existing suits, **HCCC E061 of 2020** and **HCCC E181 of 2020**.

15. The applicants asserted that their pleadings were anchored on claims of fraud, misrepresentation and non-disclosure of material facts, warranting a full trial to test evidence.

16. The foregoing are triable issues, constituting a sufficient cause for which an order a stay of execution pending appeal may be granted. I so find and hold.

17. On substantial loss was also addressed; the applicants expressed apprehension that if the stay is not granted they would suffer financial distress and their businesses hampered. The decretal sum is Kshs. 206,189,750.00/- a staggering colossal sum. Therefore, I do not think that the applicants' apprehension is baseless.

18. There is, however, the need to balance the applicant's right to appeal with the respondent's

right to enjoy the fruits of its judgment. **Machira T/A Machira & Co Advocates vs. East African Standard (No 2) [2002] KLR 6**

19. In many cases, provision of appropriate security may attain proportioned balance of the parties' competing rights.

20. The applicants indicated their willingness to provide security. They asserted that the respondent is fully and adequately secured to the full extent of its claim of **Kshs. 374,048,178/-** by the reinsurance taken out with **Klaption Insurance Company Limited** and which, in any case, is the subject matter of **HCCC E181 of 2020; Geminia Insurance Company Limited v Klaption Insurance Company Limited** which is pending.

21. The applicants further indicated that without prejudice to the full and adequate indemnity offered by **Klaption Insurance Company Limited**, they are willing to offer additional security by way of a bank or insurance guarantee within 30 days of the grant of the interim stay for Kshs. 50,000,000/- being 25% of the decretal sum.

22.The respondent submitted that the security offered in form of a bank guarantee of Kshs. 50,000,000/- is vague and constitutes a mere 24.25% of the decretal sum of Kshs. 206,189,750/-. It also submitted that there is no basis for an order for the payment of security less than the total decretal amount.

23.Whilst determining the appropriate security to be provided, ‘...insistence on a policy or practice that mandates security, for the entire decretal amount is likely to stifle possible appeals –especially in a Commercial Court, such as ours, where the underlying transactions typically tend to lead to colossal decretal amounts’. **Sewankambo Dickson v Ziwa Abby HCT-00-CC MA 0178 of 2005, the High Court of Uganda at Kampala**

24.In conclusion, the defendants’ application dated 19.2.2025 is allowed in the following terms: -

- (1)**A stay of execution is issued pending the hearing of the intended appeal or until further orders of the court.**
- (2)**In consideration of the stay in (1) above, the applicants shall issue to the respondent a bank or insurance**

**guarantee of Kshs. 100,000,000/- within  
30 days of today.**

**(3) If the applicant fails to comply with these  
orders within the time allowed, the stay  
order will lapse automatically.**

**(4) Costs are awarded to the plaintiff/  
respondent.**

**Dated, signed and delivered at Nairobi through  
Microsoft Teams online application this 26<sup>th</sup>  
day of February, 2026**

-----

**F. Gikonyo M**

**Judge**

**In the presence of: -**

Omagwa for Kabaga for Respondent

Maiyo for Omondi for defendant

CA - Ivan/Aggrey