

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT MOMBASA

CAUSE NO. E122 OF 2024

TONY OCHIENG ONGUSO CLAIMANT

VERSUS

MOMBASA PARENTS CLUB RESPONDENT

RULING

The respondent, Mombasa Parents Club, filed an application dated 20 November 2025 under the provisions of Order 42 rule 6 and Order 51 rule 1 seeking orders that the court be pleased to issue an order of stay of execution of the decree in respect of the judgment dated 30 October 2025 and any other subsequent orders issued therefor pending the hearing and determination of the appeal.

Ali Mohamed Salim filed his Supporting Affidavit, averring that he is the chairperson of the respondent. Following the judgment herein, the respondent has filed an appeal that is arguable and has a high probability of success. The respondent runs a school, and if the claim is allowed to proceed with execution, there will be substantial loss and affect the school operations. The claimant has filed his bill of costs and is actively taking steps towards execution; unless stayed by an order of stay of execution, he will prejudice the appeal process.

Salim avers that the respondent is ready and willing to abide by any conditions for stay of execution, including a deposit of the decretal sum in court.

In reply, the claimant filed his Affidavit and avers that judgment herein was delivered in his favour on 30 October 2025. He has since returned all the respondent's property as directed by the court. On 14 November 2025, he attended for clearance, which was acknowledged by the respondent.

The claimant avers that he has since filed his bill of costs and served. Such a process cannot be stopped by the instant application since he was awarded costs.

The offer to deposit the decretal sum in court instead of paying the claimant is contrary to justice. The respondent's justification is that it will suffer a loss because school operations will be affected. However, there is a judgment directing payment to the claimant which should be honoured. The respondent has not filed any evidence that the decretal sum is the only money available for the school operations. The principles necessary for the stay of execution have not been met, and the instant application should be dismissed with costs.

Both parties attended and filed written submissions.

The respondent, as the applicant, submitted that there will be a substantial loss if a stay of execution is not granted. It operates a school, and if the claimant is allowed to proceed with attachment, both the school and the learners will be affected. There is a sensitive enterprise operated by the respondent which will be adversely affected if a stay of execution is not allowed.

The respondent has complied with the provisions of Order 42, Rule 6. The claimant has since filed the bill of costs and is actively seeking to proceed with execution. In **National Industrial Credit Bank Limited v Aquinas Francis Wasike & Another [2006] eKLR**, the court held that once an applicant expresses apprehension that a respondent cannot pay back the decretal sum, an order of stay should be issued.

The application was made without delay and immediately after the judgment was delivered on 30 October 2025. The respondent has offered a security deposit in court, which has since been made.

The claimant submitted that the instant application is premature since no execution has commenced. There was an award of costs, so the bill of costs was filed to enable the complete decree to issue. Hence there is no sufficient cause for the application by the respondent as held in **Kenya Shell Limited v Benjamin Karugu Kibiru & another [1986] eKLR**.

The applicant has not demonstrated sufficient cause or the substantial loss to be suffered if the orders sought are not issued as required in their cited case of **National Industrial Credit Bank Limited v Aquinas Francis Wasike & Another [2006] eKLR**. Being dissatisfied with the judgment is not sufficient cause for the grant of an order of stay of execution. The instant application is an abuse of the court process as the respondent is not keen to pay the claimant his due judgment sum.

Determination

The court, in addressing an application for a stay of execution of its judgment, is guided by Order 42, Rule 6.

At the heart of Order 42 rule 6 is that:

***No order for stay of execution shall be made under subrule (1) unless: -
(a) The court is satisfied that the substantial loss may result to the Applicant unless the order is made, and that the application has been made without unreasonable delay;***

In the case of **Butt v Rent Restriction Tribunal (1979)** the Court of Appeal stated that the power of the court to grant or refuse a stay of execution pending appeal is discretionary, and in exercising that power, the court is mandated to consider the special circumstances of the case and its unique requirements.

In this case, the respondent asserts that an appeal is pending. None is attached to the affidavit of Salim. S/he urges the court that a bill of costs has been filed, there is no appeal or draft memorandum.

The respondent also asserts that it operates a sensitive enterprise that would be negatively affected if an order of stay is not granted. However, there is a valid court judgment subject to enforcement. Upon the findings of the court that the claimant is entitled to the decretal sum, he has a right to enjoy the fruits of his judgment.

The requirement to demonstrate the substantial loss was thus not addressed; to proceed on any other ground would negate the valid judgment. The security deposited in court on its own is not sufficient cause for the grant of an order of stay of execution. that addressed the interim.

The claimant testified that he is employed and identified his employer. This fact was corroborated by the respondent, who confirmed that, upon leaving his employment with them, he has since joined a new employer. Thus, he can repay the judgment sum if the appeal is filed and heard on the merits.

Accordingly, the application dated 20 November 2025 is without merit and is hereby dismissed with costs to the claimant.

Delivered in open court at Mombasa on this 26th day of February 2026.

M. MBARŪ

JUDGE

In the presence of:

Court assistant: Omar

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