



Konnexion Systems Limited v Independent Electoral and Boundaries Commission (Civil Case E163 of 2014) [2026] KEHC 2694 (KLR) (Commercial and Tax) (5 February 2026) (Ruling)

Neutral citation: [2026] KEHC 2694 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E163 OF 2014
JWW MONG'ARE, J
FEBRUARY 5, 2026**

BETWEEN

KONNEXION SYSTEMS LIMITED PLAINTIFF

AND

**INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION RESPONDENT**

RULING

1. The Defendant /Applicant has by an application filed on 5th May 2025 moved this Honourable Court seeking the following orders:-
 1. Spent
 2. Spent
 3. That the Honourable Court be pleased to grant a stay of execution of its Judgment delivered on 16th December 2024, pending the hearing and determination of the appeals filed therefrom by both parties herein.
 4. That costs of this application be provided for.
 5. That the court be pleased to grant any further orders if any in the interest of justice.
2. The application is supported by the grounds set out therein and the supporting affidavit sworn by CRISPINE OWIYE on 5th May 2025. It is opposed and the Plaintiff/Respondent has filed a preliminary objection and grounds of opposition dated 12th June 2025. Both parties, at the directions of the Court have filed their written submissions which I have carefully considered alongside the pleadings.



Analysis and Determination

3. It is not in dispute that this Court on 16th December 2024, having heard the dispute between the parties entered judgment in favour of the Plaintiff as against the defendant for the sum of Kshs.152,261,324/= with interest from the date of judgment. The said entry of judgment triggered two notices of appeal from both parties filed on 17th December 2024 and is the basis upon which the present application has been brought. Having therefore carefully considered the present application, the court notes that the issue that this court is called upon to determine is whether the Defendant/ Applicant has met the threshold for the grant of the orders of stay of execution sought herein.
4. Order 42 rule 6 of the Civil Procedure Rules has set out the basis upon which the prayers sought in the present application can be granted. The said Order 42 Rule 6 provides as follow;-

Stay in case of appeal [Order 42, rule 6]

- (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
- (2) No order for stay of execution shall be made under subrule (1) 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.
- (3) Notwithstanding anything contained in subrule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.
- (4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.
- (5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.
- (6) Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.



5. The three conditions that an applicant seeking to stay the execution of a judgment before this court are clearly delineated as being demonstration of
- (a) substantial loss- that the appeal will be rendered nugatory if the orders sought are not granted;-
 - or
 - (b) that no prejudice will be suffered by the Respondent if a stay of execution is granted and ;-
 - (c) that the application has been brought without inordinate delay.

These conditions have been distilled by the Courts through various decisions; See Njiiru Micheni Thiga Vs. Governor, Tharaka Nithi County Government & 5 others (2021)eKLR- where the Court stated that “the undisputed purpose of Stay pending appeal was to prevent a successful Appellant becoming a holder of a barren result for reason that he could not realize the fruits of his success”.

6. As argued by the Applicant, even where there is demonstrated substantial loss, the Court cannot require a Government entity such as the Applicant that draws its funding from the public coffers to provide security. This is buttressed by Order 42 Rule 8 which provides as follows; “No such security as is mentioned in Rules 6 & 7 shall be required from the Government or where the Government has undertaken the defence of the suit or from any public officer sued in respect of an act alleged to be done by him in his official capacity.”
7. It is therefore clear to me that this Court cannot grant stay pending appeal as sought conditional on the Applicant providing security for costs. Having therefore considered that both the Plaintiff and the Defendant have intimated their intent to appeal the judgment of this court and having perused through the memorandum of appeal as filed by the Applicant and the grounds set out thereunder, I am inclined to allow the application as sought out by the Applicant.

Conclusion and Disposition

8. In the upshot, I find and hold that the Application filed before this court and dated 5th May 2025 has merit and is hereby allowed as prayed. Each party shall bear their own costs of the Application.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5TH DAY OF FEBRUARY 2026

.....
J.W.W. MONGARE

JUDGE

In the Presence of:-

- 1. Mr. Eugene Lubullela for the Applicant.
- 2. Mr. C N Kihara for the Respondent.
- 3. Amos- Court Assistant

