



**Mwirigi v Adjacent Possible Finance (Family Appeal E198 of 2025)
[2026] KEHC 2571 (KLR) (27 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2571 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
FAMILY APPEAL E198 OF 2025
BM MUSYOKI, J
FEBRUARY 27, 2026**

BETWEEN

NICHOLAS MWIRIGI APPELLANT

AND

ADJACENT POSSIBLE FINANCE RESPONDENT

(Being an appeal from the judgment and decree in the Small Claims Court at Thika (Hon. Sylvia A. Wayodi Adjudicator/RM) dated 10th July 2025 in claim number E1551 of 2024)

RULING

1. I do not know whether I should take the application dated 28th July 2025 to which this ruling relates as a product of poor drafting or a slip of attention. I say so because the prayers in the said application do not make sense until one reads the grounds upon which it is based. More confusion is caused when one goes to the submissions where the appellant has delved into submissions on the main appeal whereas the appeal herein has not even been admitted and the only directions taken in this matter were in respect of the application. For context, the application seeks the following orders;
 1. The application be certified urgent, service dispensed with and heard ex parte in the 1st instance.
 2. This Honourable Court be pleased to issue an order of execution of judgement and decree issued by the Small Claims Court in Thika Small Claims Court Case No. E1551 of 2024.
 3. This Honourable Court be pleased to issue an order to the appeal to be admitted and the same directions do issue for filing submission during the vacation.
2. Having gone through the grounds on the face of the application, I notice that ground 3 talks of the application being one for stay of execution. It states that; ‘the appellant is therefore seeking for orders of stay of execution of judgment and decree issued by the Small Claims Court in Thika, Small Claims



Court Case No. E155 of 2004.’ The same semblance appears in paragraph 3 and 4 of the supporting affidavit.

3. Prayer two of the application seems to seek that the appeal be admitted for hearing during the then August vacation which I find premature and incompetent. Before an appeal is admitted, the court should satisfy itself that its record is in order including availability of the trial court’s file. The relevant lower court record has not been availed to this court. Further, in my view, admission of an appeal does not have to be done through an application like the one the appellant has brought as the same is a procedural issue which should be dealt with under Order 42 Rules 11 and 13 of the Civil Procedure Rules. I will not take time in dealing with that prayer as it is premature and lacking basis.
4. When the matter came for directions before my Sister Honourable Lady Justice F. Muchemi on 29-07-2025, it was ordered that the same be served within fourteen days and parties file their submissions in respect to the application within 28 days and the notice of motion be mentioned on 21-08-2025. The obvious interpretation of these directions is that the parties were to prosecute the application and not the appeal. On 21-08-2025, counsel for the appellant informed the Honourable Deputy Registrar that they had filed submissions and asked for date before the Judge and that is how the file found its way before me on 10-09-2025.
5. In view of the above, the act of the appellant abandoning his application and jumping to the main appeal must be taken as a manifestation of either failure to peruse the court file or lethargy. Nevertheless, since the respondent filed a replying affidavit and submissions in respect of the application, this court will extend a hand of latitude and consider the application as an application for stay of execution.
6. The application is supported by a six-paragraph affidavit of the appellant sworn on 28th July 2025. The affidavit says nothing more than that, the appellant has filed this appeal and that he is apprehensive that the respondent will move to execute the decree. The appellant has not shown the court the likely substantial loss he may suffer neither has he offered to deposit any security for due performance of the decree.
7. It is settled that for an application for stay of execution to succeed, the applicant must establish that he will suffer substantial loss if the application is not allowed, he has offered security for due performance of the decree and that the application was filed without inordinate delay. I am satisfied that the application was filed without inordinate delay as the decree appealed was made on 10-07-2025 while the application was filed on 29-07-2025. Although the appellant has not offered any security, I do believe that, it is at the discretion of the court and it can be ordered as the court may deem fit without necessarily having been offered by the applicant.
8. I have stated here above that the appellant has not deponed on the issue of substantial loss and I have noted that the appellant’s submissions are not on the application before me. I also note that the judgement against the appellant was for liquidated sum of Kshs 201,500.00. This in my view, is not per se a substantial amount that would cripple the appellant in the event execution issues. The appellant has not demonstrated that the respondent will be unable to refund the decretal sum in the event this appeal succeeds. I therefore hold and find that the element of substantial loss has not been satisfied.



9. The position in law is that the conditions for an application of this nature must be satisfied and proved together or conjunctively meaning that absence of one makes the application fail. In *James Wangalwa & another v Agnes Naliaka Cheseto* [2012] KEHC 1094 (KLR) it was held that;

‘These conditions are the essence of Order 42 Rule 6 CPR which I need not recite in verbatim. The conditions share an inextricable bond such that the absence of one will affect the exercise of the discretion of the court in granting stay of execution.’

10. In following the above authority, Honourable Justice J.G. Kemei held in *Block v Kenta Forest Service; Chief Land Registrar & 3 others (Interested Parties)* [2025] KEELC 5649 (KLR) that;

‘As already demonstrated in *James Wangalwa & Another v Agnes Naliaka Cheseto* (supra) the three (3) conditions for granting stay of execution pending appeal must be met simultaneously. They are conjunctive.’

11. Having found that the appellant has failed to demonstrate likelihood of substantial loss, this application lacks merits and the same is dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF FEBRUARY 2026.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Ruling delivered in presence of Mr. Ojienda for the appellant and Miss Wanjera for the respondent.

