



**Orangi & another v Nyansimera (Civil Appeal E082 of 2025)  
[2026] KEHC 2832 (KLR) (12 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2832 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
CIVIL APPEAL E082 OF 2025  
TW CHERERE, J  
FEBRUARY 12, 2026**

**BETWEEN**

**SAMUEL NYAIGOTI ORANGI ..... 1<sup>ST</sup> APPELLANT**

**MOKAYA ORANGI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**HELLEN NYABOKE NYANSIMERA ..... RESPONDENT**

**RULING**

1. This ruling concerns the Notice of Motion dated 11<sup>th</sup> December 2025, brought pursuant to sections 1A, 1B and 3A of the *Civil Procedure Act* and Order 42 Rule 6(1) and (2) of the Civil Procedure Rules, 2010, in which the Applicants seek an order of stay of execution of the ruling and all consequential orders issued by the trial court on 3rd December 2025, pending the hearing and determination of the appeal.
2. The application has its genesis in proceedings before the trial court following the death of Joshua Mariga Orangi on 17<sup>th</sup> October 2025. On 27<sup>th</sup> October 2025, the Respondent commenced Keroka MCCC E328 of 2025 and contemporaneously filed an urgent application seeking injunctive relief. In particular, the Respondent sought interim restraining orders against the Applicants, their agents and/or servants, restraining them from conducting the planned burial, interring and/or disposing of the remains of the deceased, or acting pursuant to any court orders, without involving the Respondent in the burial, pending the hearing and determination of the application.
3. The Respondent further sought injunction orders restraining the Applicants, their agents and/or servants, or any person claiming under them, from removing the remains of the deceased from Aga Khan Hospital Mortuary, interring and/or disposing of the remains, or acting pursuant to any court orders, without involving the Respondent, pending the hearing and determination of the suit.



4. Upon ex parte consideration, the trial court issued interim injunctive orders on 29<sup>th</sup> October 2025, restraining the Applicants from removing the body of the deceased from the mortuary or participating in burial arrangements, and fixed the matter for mention. The Applicants thereafter entered appearance, filed objections, and lodged an application seeking to vary or set aside the ex parte orders.
5. Notwithstanding the pendency of those objections and applications, the trial court delivered a ruling on 03<sup>rd</sup> December 2025, in which it found the Applicants to be in contempt of court, issued warrants of arrest, and ordered that they be held in custody at Keroka Police Station pending further directions.
6. It is that ruling, together with its consequential orders, that provoked the filing of an appeal and the present application for stay.
7. Before turning to the substantive merits of the application, the court must satisfy itself as to service. An affidavit of service sworn on 21<sup>st</sup> January 2026 confirms that the Notice of Motion herein together with the supporting documents, was duly served upon the Respondent's advocates, Moracha & Co. Advocates, via their official email address, with proof of electronic transmission annexed.
8. Despite such service, the Respondent neither entered appearance, nor filed any replying affidavit or grounds of opposition, nor appeared at the hearing of the application. The court is therefore satisfied that the Respondent was duly served and deliberately elected not to participate in the proceedings. The application before the court is consequently unopposed.
9. The principles governing stay of execution pending appeal are anchored in Order 42 Rule 6 of the Civil Procedure Rules. An applicant must demonstrate that the application has been brought without unreasonable delay, that substantial loss may result unless stay is granted, and that the court's discretion should be exercised in a manner that advances the interests of justice. These requirements must be considered alongside the overriding objective set out in sections 1A and 1B of the *Civil Procedure Act*.
10. On the question of delay, the ruling sought to be stayed was delivered on 03<sup>rd</sup> December 2025, while the present application was filed on 11<sup>th</sup> December 2025, a period of approximately eight days. Given the nature of the orders complained of and the immediacy of their enforcement, the court is satisfied that the application was brought promptly and without inordinate delay.
11. The central issue in the application is whether the Applicants stand to suffer substantial loss if stay is declined. The impugned ruling made a finding of contempt made a finding of contempt, accompanied by the issuance of warrants of arrest, thereby exposing the Applicants to arrest, detention, and loss of personal liberty.
12. I have considered that loss of liberty is a grave and irreversible consequence. Execution of the impugned orders prior to the hearing and determination of the appeal would occasion prejudice that cannot be cured by a favourable appellate outcome, thereby rendering the appeal nugatory.
13. On the arguability of the appeal, the Court is satisfied that the appeal is not frivolous and raises bona fide issues warranting consideration by the appellate court, including the propriety of the procedure adopted in making a finding of contempt, the issuance of warrants of arrest, and the nature of the obligations imposed upon the Applicants.
14. The discretionary nature of stay of execution was recently restated by the Court of Appeal in *Titus Makhanu & Associates Advocates v Hall Equatorial Limited* [2025] KECA 2264 (KLR), where the appellate court emphasised that the purpose of stay is to preserve the substratum of the appeal and to prevent irreversible consequences that would render the appeal nugatory. The Court of Appeal



reiterated that the nugatory aspect turns on whether the act sought to be stayed is reversible or, if not, whether damages would constitute an adequate remedy.

15. Applying those principles to the present case, the execution of contempt-related orders, including arrest and detention, is plainly irreversible. No award of damages can compensate for the deprivation of liberty already suffered. Conversely, granting stay merely preserves the status quo and allows the appellate court to pronounce itself on the legality and propriety of the impugned ruling.
16. The court has further considered whether any prejudice would be occasioned to the Respondent if stay is granted. The Respondent did not file any response to the application and, in the absence of any material to the contrary, no prejudice has been demonstrated that would arise from preservation of the status quo pending appeal.
17. For the foregoing reasons, the court finds merit in the Notice of Motion dated 11<sup>th</sup> December 2025 and it is hereby ordered:
  1. There shall be a stay of execution of the ruling and all consequential orders issued on 03<sup>rd</sup> December 2025 in Keroka MCCC E328 of 2025, pending the hearing and determination of the appeal.
  2. Mention before the Deputy Registrar on 14<sup>th</sup> April 2026 to confirm filing and service of the record of appeal and submissions on the appeal
  3. The costs of the application shall abide the outcome of the appeal.

**DELIVERED AT NYAMIRA THIS 12<sup>TH</sup> DAY OF FEBRUARY 2026**

**WAMAE.T. W. CHERERE**

**JUDGE**

Appearances

Court Assistant - Hilda

For Appellants/Applicants – Ms. Nyaboke for Mose Nyambega & Co. Advocates

For Respondent - N/A for Moracha & Co. Advocates

