

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**  
**CIVIL APPEAL NO. HCCSCA E003 OF 2025**

**PERFECT SPACE INTERIORS LTD.....APPLICANT/APPELLANT**

**VERSUS**

**MOSES NGUGI GITHINJI.....RESPONDENT**

**RULING**

1. Through the firm of DA Omwenga & Co. Advocates, the Appellant/ Applicant moved this Court by an Application, Notice of motion dated 11<sup>th</sup> September, 2025, and expressed under Sections 1A, 3A, and 65 of the Civil Procedure Act, Order 42 Rule 6 of the Civil Procedure Rules seeking Orders;-
  - a) *Spent.*
  - b) *Spent*
  - c) *That this Honourable court be pleased to issue orders of stay of execution issued at Nakuru in SCCCOMM E2150/2024 by Hon. D. Macharia in the Judgement dated 4/6/2025 pending the hearing and determination of the Appeal in Civil Appeal No. HCCSA NO. E003 OF 2025.*
  - d) *The costs of this application be provided for.*
2. The Application is based on the grounds on the face of the Notice of Motion and supported by the Affidavit sworn on the same date by Samwel Nyagisera , the director of the Applicant.
3. The application is based on the fact that judgment was entered against the Applicant on 4<sup>th</sup> June, 2025, by Honourable Dominic Macharia in Nakuru Small Claims Court Case No. SCCCOMM E2150/2024.
4. Being dissatisfied with this decision, the Applicant has filed an appeal being Civil Appeal No. HCCSCA/E003/2025. The applicant asserts that the respondent is currently in the process of executing the judgment.

Consequently, the applicant seeks a stay of execution until the appeal is heard and determined, arguing that without such an order, the pending appeal will be rendered nugatory.

5. The Appellant contends that they will suffer substantial and prejudicial financial loss if the execution proceeds. Ultimately, the Applicant maintains that allowing the application is necessary in the interest of justice.
6. In the Supporting Affidavit, the deponent highlights that the Respondent is already moving to execute the judgment. He reiterates the prayer for a stay of execution pending the determination of the appeal to ensure the judicial process remains meaningful. He states that the company stands to suffer significant financial prejudice without the Court's intervention.
7. The Respondent opposed the application vide his replying affidavit sworn on 31<sup>st</sup> October, 2025, stating that the Applicant will not suffer any financial loss as he possesses sufficient financial means to refund the decretal sum should the appeal ultimately succeed. He provides his M-Pesa and I&M Bank statements covering the period from March to October 2025 marked as exhibits 'MNG 1' and 'MNG 2' as proof of his financial liquidity.
8. He maintains that a successful litigant should not be deprived of the fruits of the judgment, which they have already obtained from the court.
9. The Respondent contends that it would be just and fair for the Court to dismiss the Applicant's request for a stay and order the Applicant to pay the costs of the application.

#### **Applicant's submissions**

10. The Respondent submitted that the central issue to be decided is whether the judgment from the lower court should be stayed. He based this argument on Order 42 rule 6(2) of the Civil Procedure Rules, which stipulates:-

***“No order for stay of execution shall be made under sub rule (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”.*

11. The Applicant cites *Vishram Ravji Halai vs. Thornton & Turpin Civil Application No. 15 of 1990 [1990] KLR 365*, where the Court of Appeal held that while its own power to grant a stay is unfettered, the High Court’s jurisdiction is fettered by three conditions namely, establishment of a sufficient cause, satisfaction of substantial loss and the furnishing of security. In addition, the Court must consider the overriding objectives found in sections 1A and 1B of the Civil Procedure Act, which require the court to seek the just, efficient, and timely disposal of proceedings at an affordable cost.
12. The Applicant argues that sufficient cause exists because the appeal is based on reasonable grounds. To define sufficient cause, the Applicant references *The Registered Trustees of the Archdiocese of Dar es Salaam vs The Chairman Bunju Village Government & Others*, which states:-

*“It is difficult to attempt to define the meaning of the words ‘sufficient cause’. It is generally accepted however, that the words should receive a liberal construction in order to advance substantial justice, when no negligence, or inaction or want of bona fides, is imputed to the appellant”.*
13. Furthermore, in *Daphene Parry vs Murray Alexander Carson*, the court noted:-

*“Though the court should no ‘doubt’ give a liberal interpretation to the words ‘sufficient cause,’ its interpretation must be in accordance with judicial principles. If the appellant has a good case on the merits but is out of time and has no valid excuse for the delay, the court must guard itself against the danger of being led away by sympathy...”.*
14. The Applicant maintains that they will suffer substantial loss because the appeal is arguable with a probability of success. Reliance is placed on the

decision in Century Oil Trading Company Ltd vs. Kenya Shell Limited Nairobi (Milimani) HCMCA No. 1561 of 2007, where Kimaru, J (As he then was) explained:-

*“The word “substantial” cannot mean the ordinary loss to which every judgement debtor is necessarily subjected when he loses his case and is deprived of his property in consequence. That is an element which must occur in every case and since the Code expressly prohibits stay of execution as an ordinary rule it is clear the words “substantial loss” must mean something in addition to all different from that... Where execution of a money decree is sought to be stayed, in considering whether the applicant will suffer substantial loss, the financial position of the applicant and that of the respondent becomes an issue. The court cannot shut its eyes where it appears the possibility is doubtful of the respondent refunding the decretal sum in the event that the applicant is successful in his appeal. The court has to balance the interest of the applicant who is seeking to preserve the status quo pending the hearing of the appeal so that his appeal is not rendered nugatory and the interest of the respondent who is seeking to enjoy the fruits of his judgement”.*

15. The Applicant asserts they will suffer irreparably due to the specific circumstances of this case, noting that while the case was filed on 26<sup>th</sup> October, 2024, judgment was not rendered until 4<sup>th</sup> June, 2025, arguing it fell outside the mandatory 60- day period for Small Claims Court matters.
16. Citing the case of John Gachanja Mundia vs. Francis Muriira Alias Francis Muthika & Another [2016] eKLR, the Applicant argues for a wider sense of justice and argued that the Court held that;-

*“There is doubt the Applicant has shown that substantial loss would occur unless stay is granted. However, I will be guided by a greater sense of justice. Courts of law have said that, with the entry of the*

***overriding principle in our law and the anchorage of substantive justice in the Constitution as a principle of justice, courts should always take the wider sense of justice in interpreting the prescriptions of law designed for grant of relief”.***

17. The Applicant submits that there was no unreasonable delay in filing the application, as the judgment was delivered on 4<sup>th</sup> June, 2025, and the application for stay was filed on 11<sup>th</sup> September, 2025. The Applicant therefore urges the Court to allow the stay of execution as prayed.

**Respondent’s submissions**

18. The Respondent identified two issues for determination, that is; whether a stay of execution should be granted pending appeal and who should bear the costs of the application.
19. On stay of Execution, the Respondent cites Order 42 rule 6 of the Civil Procedure Rules 2010, which gives the court discretionary power to grant a stay for, among other things, sufficient cause.
20. He submits that the burden of proof lies with the Applicant to establish that sufficient cause. In support, he cites the case of **James Wangalwa & Another v Agnes Naliaka Cheseto [2012] KEHC 1094**, where it was stated:-

***“The incidence of the legal burden of proof on matters which the applicant must prove lies with the Applicant”. They also reference Halsbury's Law of England, vol. 17, paragraph 14: "14. Incidence of the legal burden... in respect of a particular allegation, the burden lies upon the party for whom the substantiation of the particular allegation is an essential of his case".***

21. Therefore, he submits that to succeed, the Applicant must satisfy three conditions: substantial loss, no unreasonable delay, and the provision of security. Citing **Rhoda Mukuma v John Abuoga [1988] eKLR**, the Respondent argues these conditions must go hand in hand, and the absence of even one affects the court's discretion.

22. Defining substantial loss as a relative term based on the totality of consequences of execution, he cites RWW v EKW [2019] KEHC 6523 KRL referencing Silverstein N Chesoni [2002] 1KLR 867) that held that;-

***“Demonstrating what substantial loss is likely to be suffered, is the core to granting a stay order pending Appeal. Substantial loss is a relative term and more often than not can be assessed by the totality of the consequences which an applicant is likely to suffer if stay of execution is not granted...”***

23. He argues that since the subject decree is a money decree, loss only occurs if paying causes extreme difficulty or if the Respondent cannot reimburse the money later. For that argument, he relies on the case of Kenya Shell Limited v Kibiru [1986] KLR 410, where Platt Ag. JA stated:-

***“There was no evidence of substantial loss to the applicant, either in the matter of paying the damages awarded, which would cause difficulty to the applicant itself, or because it would lose its money, if payment was made, since the respondents be unable to repay the decretal sum plus costs in two courts.”***

24. Putting emphasis that the Applicant must prove specific damages rather than making broad claims, the Respondent quotes Kenya Shell case (supra) where Gachuhi JA held;-

***“It is not sufficient by merely stating that the sum of Shs. 20,380.00 is a lot of money and the applicant would suffer loss if the money is paid. What sort of loss would this be?... On the other hand, granting the stay would be denying a successful litigant of the fruits of his judgement”***.

25. He submits that the Applicant has made a mere assertion of loss without providing evidence or proof of financial prejudice. He reiterates that assertion alone is insufficient for the court to grant a stay.

26. The Respondent highlights that they have deposed to having the means to repay the sum and provided bank statements, which the Applicant has not disputed. In addition, since there is no evidence of substantial loss, the Respondent argues the appeal is not at risk of being rendered nugatory. Consequently, the Respondent submits the application fails because it does not meet the first legal condition.

27. Regarding security, the Respondent cites *Gianfranco Manenthi & Another v Africa Merchant Assurance Company Ltd [2019] KEHC 7586* that held that;-

***“\_The applicant must show and meet the condition of payment of security for due performance of the decree... the winner of litigation should not be denied the opportunity to execute the degree in order to enjoy the fruits of his judgment in case the appeal fails”.***

28. The Respondent argues that security ensures the winner does not have to restart execution if the appeal fails. They rely on the case of *Arun C Sharma v Ashama Raikundalia T/A Rairundalia & Co Advocates* where Gikonyo J held that;-

***“The purpose of the security needed under Order 42 is to guarantee the due performance of such decree or order as may ultimately be binding on the applicant. It is not to punish the judgment debtor... the judgment is like a debt hence the applicants become and are judgment debtors in relation to the respondent”.***

29. Accordingly, that the Court should not help litigants delay execution through vexatious and frivolous appeals.

30. The Applicant is also accused of bad faith for not proposing any security. In support, they quoted *James Wangalwa* case (supra) where Gikonyo J stated;-

***“I agree with the respondent that the Applicants have not offered or proposed any security... This should be done as a sign of good faith that the Applicant is ready and willing to commit to giving security”.***

31. On the issue of delay, the Respondent emphasises that courts of equity frown at a dilatory claimant. He states that the trial court's 30-day stay ended on 4<sup>th</sup> July, 2025 but the Applicant waited until 11<sup>th</sup> September 2025, nearly three months, to file this application without providing a plausible explanation. The Respondent submits the Applicant is guilty of laches.
32. In conclusion, the Respondent urges the court to balance the interests of both parties and disallow the application. However, that if the same is granted, the Respondent insists the Applicant must deposit the entire decretal amount within 30 days into a joint interest-earning account.
33. Finally, the Respondent urges that the Applicant be ordered to bear the costs of the application

#### **Analysis and Determination**

34. Having considered the application, Affidavits in support and in opposition thereto, submissions and the authorities relied upon by parties, the only issue for determination is whether the prayer for stay of Execution pending Appeal should issue.
35. The application is premised on Order 42 rule 6(2) of the Civil Procedure Rules, 2010 which provides that:-

***“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 sub rule (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.”***

36. It therefore follows that no appeal or second appeal will operate as a stay. A party must show sufficient reasons why stay orders should be granted as held in *Vishram Ravji Halai vs. Thornton & Turpin Civil Application No. Nairobi 15 of 1990 [1990] KLR 365.*
37. An application for a stay of execution aims to preserve the subject matter, ensuring a successful appellant’s victory isn't rendered meaningless. In exercising this discretion, the court must balance the appellant's rights against the respondent’s entitlement to the benefits of their judgment. Ultimately, the court seeks to prevent any hardship that cannot be rectified by a subsequent award of costs.
38. On delay, the judgment in the trial court was delivered on 4<sup>th</sup> June 2025. A 30-day stay granted by the trial court expired on 4<sup>th</sup> July 2025. The Applicant did not file this application until 11<sup>th</sup> September 2025, resulting in a delay of nearly three months. Despite delaying in filling this Application, the Appellant did not give any explanation for the delay.
39. On substantial loss, the Applicant argues that the appeal will be rendered nugatory, and that they will suffer substantial and prejudicial financial loss if execution proceeds. Loss in a money decree is generally only established if the Respondent is shown to be unable to repay the sum or if the payment would cause extreme financial hardship to the Applicant. The Applicant has offered mere assertions of loss without providing evidence of financial prejudice.
40. Conversely, the Respondent has countered this and demonstrated his ability to refund the decretal sum by producing in evidence his M-Pesa and I&M Bank statements, which are marked as Exhibits 'MNG 1' and 'MNG 2'. The

Respondent has demonstrated his financial liquidity and ability to refund the decretal sum should the appeal succeed. It thus follows that the Applicant has failed to satisfy the court that a substantial loss is imminent.

41. On security for due performance, the Applicant has moved the Court without offering the same despite its requirement under Order 42 Rule 6 of the Civil Procedure Rules.
42. In light of the foregoing, this Court notes that the Applicant has failed to prove substantial loss, has not explained the unreasonable delay, and has failed to offer security.
43. Consequently, his Application dated 11<sup>th</sup> September, 2025 lacks merit and therefore dismissed with costs to the Respondent.

**Dated, signed and delivered at Nakuru this 25<sup>th</sup> Day of February, 2026.**

**PATRICIA GICHOHI**  
**JUDGE**

**In the presence of:**

**Mr. Omwenga for Applicant**

**Ms Makoha for Respondent**

**Erickson , Court Assistant**