



**Ramji & another v Dry Associates Investments Group (Commercial Case E088 of 2018)
[2026] KEHC 2693 (KLR) (Commercial and Tax) (27 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2693 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E088 OF 2018
MN MWANGI, J
FEBRUARY 27, 2026**

BETWEEN

**NOORBEGUM RAMJI 1ST PLAINTIFF
AREEZ RAMJI 2ND PLAINTIFF**

AND

DRY ASSOCIATES INVESTMENTS GROUP DEFENDANT

RULING

1. The defendant/applicant filed a Notice of Motion application dated 27th March 2025 pursuant to the provisions of Order 42 Rule 6 & Order 51 Rule 1 of the Civil Procedure Rules, 2010, and Sections 1A, 1B, 1C & 3A of the *Civil Procedure Act*, seeking orders for stay of execution of this Court's Judgment delivered on 28th February 2025, and the decree, as well and all consequential proceedings, pending the hearing and determination of the intended Appeal to the Court of Appeal.
2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. George Kenya, the defendant's Finance Manager. Mr. Kenya averred that Judgment was entered against the defendant on 28th February 2025 in favour of the plaintiffs for Kshs.17,093,006.85 together with interest at 21% per annum from 27th April 2017, until payment in full, and the Court also granted the defendant an order for stay of execution for thirty (30) days, expiring on 28th March 2025.
3. Mr. Kenya stated that the defendant being aggrieved by the said Judgment, lodged a Notice of Appeal dated 5th February 2025 and applied for typed proceedings from the High Court. He further stated that the defendant is apprehensive that the plaintiffs may be unable to refund the decretal sum should the intended Appeal to the Court of Appeal succeed, and unless an order for stay of execution pending appeal is granted, the defendant stands to suffer substantial loss and the Appeal will be rendered



- nugatory. Mr. Kenya stated that the defendant is willing to furnish security for the due performance of the decree by way of a bank guarantee or such other terms as the Court may deem fit.
4. In opposition to the defendant's application, the plaintiffs filed a replying affidavit sworn on 8th April 2025 by Mr. Areez Ramji, the 1st plaintiff herein. Mr. Ramji confirmed that Judgment was delivered on 28th February 2025 awarding the plaintiffs Kshs.17,093,006.85 together with interest at 21% per annum from 27th April 2017 until payment in full, plus costs. He averred that as at 31st March 2025, the total decretal sum stood at Kshs.45,549,468.07.
 5. He contended that the defendant's offer to provide a bank guarantee instead of depositing the decretal sum is inadequate as a bank guarantee is insufficient security due to its annual expiry, dependent on the defendant's cooperation for renewal, difficulty of enforcement upon expiry, the lengthy duration of hearing Appeals, and the risk of regulatory censure affecting renewal. He disputed the defendant's claim that the plaintiffs would be unable to refund the decretal amount if the Appeal succeeds and asserted that the plaintiffs are capable of refunding any sums ordered. Mr. Ramji pointed out that this suit has been pending since 2018 and that continued delay would unjustly deny the plaintiffs the fruits of their Judgment.
 6. In a rejoinder, the defendant filed a further affidavit sworn on 5th May 2025 by Mr. George Kenya, the defendant's Finance Manager. Mr. Kenya maintained that the application for stay of execution is merited, as the intended Appeal challenges the findings of misrepresentation that led to the award of Kshs.17,093,006.85 in the Judgment delivered on 28th February 2025. He averred that a bank guarantee is a legally recognized and adequate form of security that sufficiently protects the plaintiffs. He reiterated that the decretal sum of Kshs.45,549,468.07 is colossal and that the defendant is reasonably apprehensive of the plaintiffs' ability to refund the amount should the Appeal succeed, given the defendant's lack of knowledge of the plaintiffs' assets. Mr. Kenya asserted that the bank guarantee would not prejudice the plaintiffs, noting that it is renewable and that failure to renew would result in automatic lapse of any stay, and expose the defendant to execution.
 7. The plaintiff also filed a further affidavit sworn on 22nd July 2025 by Mr. Areez Ramji, the 1st plaintiff herein. Mr. Ramji disputed the defendant's assertion that the plaintiffs would be unable to refund the decretal sum if required, noting that they invested Kshs.17,093,006.85 on the strength of the defendant's representation that the investment was insured. To dispel any doubt as to the plaintiffs' financial capacity, Mr. Ramji detailed their resources, including ownership of Butech Limited with reported revenues and profits, the 1st plaintiff's directorship income, ownership of a commercial property in Mombasa valued at approximately Kshs.120,000,000/= generating substantial annual rental income, and additional land holdings with significant estimated values. He further set out the plaintiffs' investments in government bonds, foreign currency accounts, and stock market holdings, as well as ownership of several motor vehicles. Mr. Ramji asserted that the plaintiffs are fully capable of refunding the decretal amount should the intended Appeal succeed.
 8. The application herein was canvassed by way of written submissions. The defendant's submissions were filed on 5th May 2025 & 15th August 2025 by the law firm of Oraro & Company Advocates, whereas the plaintiffs' submissions were filed on 22nd July 2025 by the law firm of Wandabwa Advocates.
 9. Ms Claire Mwangi, learned Counsel for the defendant relied on the cases of Equity Bank Limited v Taiga Adams Company Limited [2006] KEHC 860 (KLR) and Tononoka Rolling Mills Limited v James Kilonzo Peter [2019] KEHC 10791 (KLR), and submitted that payment of the decretal sum, now computed at Kshs.45,549,468.07, would occasion real and irreparable loss if the intended Appeal succeeds, as the plaintiffs may be unable to refund the amount. She argued that once inability to



refund is reasonably alleged, the evidential burden shifts to the plaintiffs, as the defendant cannot reasonably be expected to know the plaintiffs' resources. Counsel contended that the plaintiffs have not discharged this evidential burden and that reliance on their financial position in 2017 is neither current nor empirical. As to the timelines within which the instant application was filed, she stated that it was filed timeously.

10. On the issue of security for the due performance of the decree, Ms Mwangi submitted that a bank guarantee is an adequate and legally recognized form of security under Order 42 Rule 6(2)(b) of the Civil Procedure Rules, 2010, which vests the Court with the discretion as to the nature of security to be deposited. She relied on the cases of *Butt v Rent Restriction Tribunal* [1982] KLR 417 and *Rosengrens Ltd v Safe Deposit Centres Ltd* [1984] 3 All ER, and stated that this Court's discretion should be exercised to avoid rendering an Appeal nugatory. She further stated that as long as the plaintiffs are adequately protected, the form of security is immaterial. She argued that concerns about annual expiry and renewal of the bank guarantee are unfounded, as failure to renew would automatically lead to lapse of the stay and expose the defendant to execution, a risk the defendant will not countenance.
11. Mr. Wandabwa, learned Counsel for the plaintiff submitted that under Order 42 Rule 6 of the Civil Procedure Rules, 2010, as affirmed by the Court in the case of *James Wangalwa & another v Agnes Naliaka Cheseto* [2012] KEHC 1094 (KLR), the plaintiffs must cumulatively demonstrate substantial loss, absence of unreasonable delay, and provision of adequate security, failure to which the Court's discretion cannot be exercised in their favour. He cited the case of *Virginia Wangui Nguu v Stephen Kahuki Kamau & another* [2004] KEHC 129 (KLR), and contended that the defendant has failed to establish substantial loss, as its claim that the plaintiffs would be unable to refund the decretal sum is founded solely on a bare belief, unsupported by facts, evidence, or disclosure of sources as required under Order 19 Rule 3(1) of the Civil Procedure Rules, 2010.
12. Mr. Wandabwa argued that the defendant's own conduct in previously inducing the plaintiffs to invest substantial sums negates any bona fide belief that they are impecunious, and that under Sections 107 and 108 of the *Evidence Act*, the burden to prove impecuniosity lies with the defendant, a burden it has failed to discharge. He cited the case of *Owade & another v Njoroge* [2022] KEHC 10715 (KLR), and asserted that substantial loss cannot be inferred from execution alone. Counsel submitted that the defendant neither demonstrated such loss nor showed that the intended Appeal is arguable or non-frivolous, a further prerequisite to preserving the status quo.
13. He referred to the case of *Simba Coach Limited v Kiriiyu Merchants Auctioneers* [2019] KEHC 8787 (KLR), and further submitted that the bank guarantee tendered is inadequate and non-compliant, as it is for a sum lower than the principal decretal amount, far below the total decretal sum inclusive of interest and is valid for only twelve (12) months, despite Appeals typically lasting several years. Mr. Wandabwa relied on the case of *Omari v Gichana* [2023] KEHC 17871 (KLR), and stated that the plaintiffs have litigated this matter since 2018 and are entitled to the fruits of their Judgment. He urged this Court not to over-emphasize on protecting an appellant at the expense of successful litigants.
14. In a rejoinder, Ms Mwangi relied on the case of *Samvir Trustee Limited v Guardian Bank Limited* [2007] KEHC 2438 (KLR), and submitted that although the plaintiffs had annexed evidentiary material in their further affidavit to demonstrate their alleged ability to refund the decretal sum, the Court's overriding objective is to do justice to both parties through a careful balancing of competing rights. She cited the case of *County Government of Narok v British Pharmaceuticals Limited* [2021] KEHC 9595 (KLR), and contended that the Court is confronted with two competing rights, the defendant's right to pursue an Appeal without suffering substantial loss that would render the Appeal nugatory, and the plaintiffs' right to immediate enjoyment of the fruits of their Judgment. She argued



that Courts routinely grant conditional stays to strike this balance, where stay is granted subject to partial payment and strict timelines for prosecution of the Appeal.

15. Ms Mwangi stated that in this case, the defendant has offered security in the form of a bank guarantee and has already filed its Record of Appeal at the Court of Appeal, being Civil Appeal No. E408 of 2025. She referred to the case of Focin Motorcycle Co. Limited v Ann Wambui Wangui & another [2018] KEHC 8358 (KLR), and asserted that the provision of a bank guarantee constitutes good faith and satisfies the requirement for security. She cited the case of AIC Litein Cottage Hospital v Cheruiyot & 2 others [2023] KEHC 24462 (KLR), and contended that Courts have consistently found partial security to be adequate depending on the circumstances of each case. She maintained that the security offered sufficiently balances the competing rights of the parties. Ms Mwangi submitted that there is no certainty that the assets listed by the plaintiffs will remain intact, available, or of the same value by the time the Appeal is determined, hence reliance on such assets does not adequately mitigate the risk of substantial loss.

Analysis And Determination.

16. I have considered the application filed herein, the grounds on the face of it and the affidavits filed in support thereof. I have also considered the replying and further affidavits filed by the plaintiff and the written submissions by Counsel for the parties. The issue that arises for determination is whether the defendant has met the conditions to warrant being granted an order for stay of execution pending Appeal.
17. The principles that govern a party being granted an order for stay of execution pending Appeal are provided for under Order 42 Rule 6(2) of the Civil Procedure Rules, 2010, which states as follows –
 - 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.
18. In the often cited case of Vishram Ravji Halai v Thornton & Turpin [1990] KLR 365, the Court of Appeal held that while its power to grant a stay pending Appeal is unfettered, the High Court's jurisdiction under Order 42 Rule 6 of the Civil Procedure Rules, 2010, is circumscribed by three specific conditions, namely-
 - i. establishment of a sufficient cause;
 - ii. satisfaction of substantial loss; and
 - iii. the furnishing of security.
19. It is not disputed that the defendant has since the Judgment delivered on 28th February, 2025, lodged an Appeal to the Court of Appeal against this Court's Judgment, rendered in favour of the plaintiffs for the sum of Kshs.17,093,006.85 together with interest at 21% per annum from 27th April 2017, until payment in full.



20. As to whether the defendant shall suffer substantial loss in the event that an order for stay of execution pending Appeal is not granted, I agree with the Court's finding in the case of *Kenya Shell Limited v Kibiru* [1986] KLR 410, where it was held as hereunder -

It is usually a good rule to see if Order XLI Rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the corner stone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore, without this evidence it is difficult to see why the respondents should be kept out of their money. (Emphasis added).

21. The impugned decree herein is a money decree. It is now well settled that when a decree is a money decree, Courts will not readily grant an order for stay of execution pending Appeal unless it is demonstrated that the decree-holder is not financially sound, thus incapable of refunding the decretal sum to the judgment debtor, in the event that the Appeal is successful.
22. In the case of *Michael Ntouthi Mitheu v Abraham Kivondo Musau* [2021] KEHC 4530 (KLR), the Court in allowing an application similar to the instant one, made the following observation –

Where the allegation is that the respondent will not be able to refund the decretal sum the burden is upon the applicant to prove that the Respondent will not be able to refund to the applicant any sums paid in satisfaction of the decree. See *Caneland Ltd. & 2 Others vs. Delphis Bank Ltd.* Civil Application No. Nai. 344 of 1999.

The law, however appreciates that it may not be possible for the applicant to know the respondent's financial means. The law is therefore that all an applicant can reasonably be expected to do, is to swear, upon reasonable grounds, that the Respondent will not be in a position to refund the decretal sum if it is paid over to him and the pending appeal was to succeed but is not expected to go into the bank accounts, if any, operated by the Respondent to see if there is any money there. The property a man has is a matter so peculiarly within his knowledge that an applicant may not reasonably be expected to know them. In those circumstances, the legal burden still remains on the applicant, but the evidential burden would then, in those circumstances, where the applicant has reasonable grounds which grounds must be disclosed in the application that the Respondent will not be in a position to refund the decretal sum if the appeal succeeds, have shifted to the Respondent to show that he would be in a position to refund the decretal sum. See *Kenya Posts & Telecommunications Corporation vs. Paul Gachanga Ndarua* Civil Application No. Nai. 367 of 2001; *ABN Amro Bank, N.K. vs. Le Monde Foods Limited* Civil Application No. 15 of 2002.

23. The defendant averred that it is apprehensive that the plaintiffs may be unable to refund the decretal sum should the intended Appeal to the Court of Appeal succeed, thereby rendering the said Appeal nugatory and causing the defendant to suffer substantial loss. The plaintiffs on the other hand disputed the defendant's claim that they would be unable to refund the decretal sum in the event that the Appeal succeeds, and asserted that they are capable of refunding any sums ordered noting that they invested Kshs.17,093,006.85 on the strength of the defendant's representation that the investment was insured.
24. The plaintiffs further averred that they have several resources at their disposal that will enable them to refund to the defendant the decretal sum, if their Appeal at the Court of Appeal succeeds. They demonstrated ownership of Butech Limited with reported revenues and profits, the 1st plaintiff's directorship income, ownership of a commercial property in Mombasa valued at approximately



Kshs.120,000,000/= generating substantial annual rental income, additional land holdings with significant estimated values, their investments in government bonds, foreign currency accounts, and stock market holdings, as well as ownership of several motor vehicles.

25. The defendant in response to the plaintiffs' assertions submitted that there is no certainty that the assets listed by the plaintiffs will remain intact, available, or of the same value by the time the Appeal is determined, thus reliance on such assets does not adequately mitigate the risk of substantial loss.
26. Upon examination of the plaintiffs' further affidavit, wherein they adduced evidence of their financial standing and capability to repay the defendant the decretal sum in the event that its Appeal at the Court of Appeal is successful, I am persuaded that the plaintiffs are financially sound and capable of refunding the decretal sum to the defendant in the event that the Appeal is successful, noting that among their assets, are parcels of land whose value would ordinarily appreciate over the years rather than depreciate in value. In the circumstances, I am not persuaded that the defendant has demonstrated that it stands to suffer substantial loss in the event that the orders being sought herein are not granted.
27. As to whether there has been delay in the filing of the application herein, I am not persuaded that it is the case. The impugned Judgment was delivered on 28th February 2025 and on the same day, the defendant was granted a 30-day stay of execution which was set to expire on 28th March 2025. The application herein was filed on 27th March 2025, a day before the 30-day stay of execution granted earlier expired. I am therefore persuaded that the instant application was filed timeously.
28. In regard to deposit of security, the defendant asserted that it is willing to furnish security for the due performance of the decree by way of a bank guarantee or such other terms as the Court may deem fit. It went ahead to exhibit a bank guarantee dated 2nd May 2025 from the Cooperative Bank. The plaintiffs on the other hand stated that the defendant's offer to provide a bank guarantee instead of depositing the decretal sum is inadequate as a bank guarantee is insufficient security due to its annual expiry, dependent on the defendant's cooperation for renewal, difficulty of enforcement upon expiry, the lengthy duration of Appeals, and the risk of regulatory censure affecting renewal of a bank guarantee.
29. In a rejoinder, the defendant argued that a bank guarantee is a legally recognized and adequate form of security that sufficiently protects the plaintiffs noting that it is renewable and that failure to renew would result in automatic lapse of any stay and expose the defendant to execution.
30. In the case of Focin Motorcycle Co. Limited vs. Ann Wambui Wangui & another (supra), it was stated thus-

Where the applicant proposes to provide security as the Applicant has done, it is a mark of good faith that the application for stay is not just meant to deny the respondent the fruits of judgment. My view is that it is sufficient for the applicant to state that he is ready to provide security or to propose the kind of security but it is the discretion of the Court to determine the security.

31. It is now well settled that in the absence of proof of substantial loss, Court's will rarely grant an order for stay of execution pending Appeal. However, it is also settled law that when considering whether to grant orders of the nature being sought herein, a Court has to ensure that the defendant's businesses are not seriously affected, while at the same time, the plaintiffs are also assured that their money will be there for them should the intended Appeal not succeed.
32. Additionally, it is trite that in considering an application for stay of execution pending Appeal, the Court must strike a balance between the competing rights of the parties, on the one hand, the



appellant's undoubted right of Appeal, and on the other, the respondent's entitlement to enjoy the fruits of a valid Judgment unless sufficient cause is shown.

33. In this instance, although substantial loss was not strictly proved, in balancing the competing interests of the parties herein, I am persuaded that the instant application is merited. It is hereby allowed in the following terms -

- i. Pending the hearing and determination of the Appeal at the Court of Appeal, I hereby grant an order for stay of execution of the Judgment of this Court delivered on 28th February 2025, and the decree, and all consequential proceedings therefrom;
- ii. The defendants shall deposit the decretal sum in a joint interest-earning account in the names of the Advocates for the parties herein within thirty (30) days from the date of this Ruling;
- iii. In default of order No. (ii) above, the application herein shall be deemed to have been dismissed and the plaintiffs shall be at liberty to execute; and
- iv. Costs of the application are hereby awarded to the plaintiffs, who already have a decree in their favour.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 27TH DAY OF FEBRUARY 2026.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

NJOKI MWANGI

JUDGE

In the presence of;-

Ms Claire Mwangi for the defendant/applicant

Mr. Oundo for the plaintiffs/respondents

Ms B. Wokabi – Court Assistant.

