

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL APPEAL NO. E870 OF 2025**

**DANIEL KIPRONO .....**

**APPELLANT/APPLICANT**

**VERSUS**

**DELPHINE AKOTH OYOLLO ..... 1<sup>ST</sup>**

**RESPONDENT**

**REHEMA WAIRIMU ATHUMANI ..... 2<sup>ND</sup>**

**RESPONDENT**

**R U L I N G**

1. This ruling is in respect to the application dated 5<sup>th</sup> September 2025 in which the Appellant/Applicant seeks orders for stay of execution of the judgment and decree delivered on 31st July 2025 in Milimani Civil Suit No. E1158 of 2023 pending the hearing and determination of the appeal.
2. In the impugned judgement, the trial court awarded the 1<sup>st</sup> Respondent damages amounting to a total of Kshs. 2,730,980 as compensation arising from injuries that he suffered in a road traffic accident. The Application is supported by the affidavit of **Ms Mary Odera** and the grounds stated on the body of the application.
3. The 1st Respondent opposed the application through a replying affidavit sworn on 16<sup>th</sup> September 2025, and

written submissions urging the dismissal of the application with costs.

4. The application was canvassed by way of written submissions which I have considered.
5. A summary of the Applicant's submissions is that he has an arguable appeal wherein he challenges the assessment of damages and the failure to consider relevant factors. It was the Applicant's case that he has filed the application without unreasonable delay, he will suffer substantial loss if the stay sought is not granted and that he is willing to furnish sufficient security for the due performance of the decree.
6. The 1<sup>st</sup> Respondent, on the other hand, submitted that the application does not meet the threshold set for the granting of the orders for granting of stay of execution pending appeal. The 1<sup>st</sup> Respondent argued that the application is an abuse of the court process and is merely intended to delay the realisation of the fruits of her decree.
7. The 1<sup>st</sup> Respondent seeks the dismissal of the application with costs or, in the alternative, the stay be granted on condition that the Applicant pays  $\frac{1}{2}$  of the decretal amount to her and deposits the other  $\frac{1}{2}$  in a joint interest-earning account.
8. I have carefully considered the application and the parties' respective submissions. I find that the main issue for my determination is whether the applicant has made out a case for the granting of the orders sought in the application.

## Analysis and Determination

9. Order 42 Rule 6(2) of the Civil Procedure Rules (CPR) guides applications for stay pending appeal and provides that an Applicant must demonstrate that he will suffer substantial loss if the stay is not granted, that the application has been made without unreasonable delay and that he is willing to offer security.
10. I will proceed to determine whether the above conditions for grant of stay have been met.
11. On whether the appellant will suffer substantial loss, I am reminded of the sentiments expressed by Gikonyo J in ***James Wangalwa & another vs. Agnes Naliaka Cheseto*** Misc Application No 42 of 2011 [2012] eKLR where it was held: -

***“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process.***

***The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant***

**as the successful party in the appeal. This is what substantial loss would entail, a question that was aptly discussed in the case of *Silverstein vs .Chesoni [2002] 1KLR 867*, and also in the case of *Mukuma vs. Abuoga* quoted above. The last case, referring to the exercise of discretion by the High Court and the Court of Appeal in the granting stay of execution, under Order 42 of the CPR and Rule 5(2) (b) of the Court of Appeal Rules, respectively, emphasized the centrality of substantial loss thus:**

**“...the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”**

12. It is trite that proof that substantial loss is likely to be suffered, is at the centre of granting a stay order pending Appeal. Substantial loss is however a relative term and more often than not can be assessed from the totality of the consequences which an applicant is likely to suffer if stay of execution is not granted and that applicant is therefore forced to pay the decretal sum. (See ***Daniel Chebutul Rotich & 2 Others vs. Emirates Airlines Civil Case No. 368 of 2001***).
13. In the present case, I note that the decretal sum is quite a substantial amount and the 1<sup>st</sup> Respondent has not

indicated that she will be in a position to refund the same to the Applicant should the appeal be successful. It is my view that the Applicant has demonstrated that he will suffer substantial loss if stay is not granted. I find that, in the circumstances of this case, it will be in the interest of justice to preserve the subject matter of the appeal so that it is not rendered nugatory.

14. The other conditions for granting stay, I note that the Applicant has indicated that he is willing to furnish security for the due performance of the decree and that the instant application was filed within reasonable time having been filed on 5<sup>th</sup> September 2025 when the impugned judgment was delivered on 31<sup>st</sup> July 2025.
15. For the reasons that I have stated in this ruling, I find that the instant application satisfies the conditions set out in Order 42 Rule 6(2)(b) of the CPR. I however note that fairness requires balancing both parties' rights. The Respondent has waited long for compensation for the serious injuries that she suffered in the accident and I am therefore of the view that partial release of funds is appropriate to alleviate any prejudice.
16. Accordingly, I make the following orders: -
  - a) Stay of execution of the judgment and decree in Milimani Civil Case No. E1158 of 2023 is hereby granted, pending the hearing and determination of the appeal.***
  - b) The stay is granted on the following conditions:***
    - i) The Applicant shall pay ½ of the decretal sum to***

***the 1st Respondent within 45 days;***  
***ii) The remaining ½ shall be deposited in an interest-earning joint account in the names of both advocates within 45 days;***  
***ii) In default of (a) or (b), the stay shall automatically lapse.***

***c) Costs of this application shall abide the outcome of the appeal.***

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF JANUARY, 2026.**

**HON. W. A. OKWANY  
JUDGE  
27/01/2026**

**FOR APPELLANT .....**

**FOR THE RESPONDENT .....**

**COURT ASSISTANT Uber**