



REPUBLIC OF KENYA



**Matunda Fruits Bus Services Limited v Odhiambo (Civil Appeal
E067 of 2025) [2026] KEHC 1717 (KLR) (27 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 1717 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL E067 OF 2025
SM MOHOCHI, J
JANUARY 27, 2026**

BETWEEN

MATUNDA FRUITS BUS SERVICES LIMITED APPELLANT

AND

SUSAN OKUTOYI ODHIAMBO RESPONDENT

RULING

1. Before me is a Notice of Motion Application dated 14th April 2025 filed pursuant to Order 21 rule 1B, Order 22 rule 22, Order 40 Rule 6, Order 51 rule 1 of the Civil Procedure Rules, Section IA, IB & 34,79G&95 of the *Civil Procedure Act*, Article 159 (2) (a) & (d) of the *Constitution* of Kenya seeking for the following relief(s);
 - i. Spent
 - ii. Spent
 - iii. Spent.
 - iv. That the Court be pleased to grant stay of execution of the Judgment delivered, by the Honourable Principal Magistrate Ruth Kefa Chebesio on 18th February, 2025 holding the Appellant 50% liable and awarding the Respondent General damages Kshs. 3,000,000/-, Helpers cost- Kshs. 2,880,000/-, Loss of earnings-Kshs. 2,918,717/; Special damages of Kshs. 195,540/; costs of the suit and interest thereon pending the hearing and determination of the Appeal being Civil Appeal No. E067 of 2025
 - v. That the court be pleased to grant an Order for stay of all proceedings in the Trial Court, pending hearing and determination of this Appeal.
 - vi. That the Court be pleased to issue an Order for the applicant to deposit the entire decretal sum of Kshs. 4,497,129 in court or in a joint interest earning account in the name of counsels



for both parties pending hearing and determination of the appeal being Nakuru HCCA E067 of 2025.

- vii. That this Honourable Court be pleased to issue any other and/or direction it deems fit to grant in the circumstances.
 - viii. That the costs of this Application abide the outcome of the Appeal.
2. The Application is based on the following eleven (11) general grounds:-
- i. That, the Defence Case in Nakuru CMCC No. E621 of 2023 was closed and the parties filed their submissions and the matter was reserved for delivery of judgment on 18/02/2025.
 - ii. The judgment in the subordinate court was delivered vide a judgment dated 18/02/2025 in the following terms; liability 50% against the Applicant; General damages- Kshs. 3,000,000/-, Helpers cost- Kshs. 2,880,000/-, Loss of earnings Kshs. 2,918,717/-; Special damages of Kshs. 195,540/-; costs of the suit and interest thereon were also awarded to the Respondent herein.
 - iii. The Applicant, dissatisfied with the Judgment, lodged an appeal at the high court dated 14/03/2025 and filed on 19/03/2025.
 - iv. The Applicant is apprehensive that in the event the amount is paid to the Respondent, and the high court overturns the judgment of the trial court they may never recover the amount which amount is very high.
 - v. The said Appeal raises numerous triable issues and has high chances of success.
 - vi. The Applicant is apprehensive that the Respondent will commence execution proceeding against them to their detriment.
 - vii. The Applicant is ready and willing to deposit the entire decretal sum in court or in a joint interest earning account in the name of counsels for both parties pending the hearing and determination of the appeal, within the scope of the *Insurance (Motor Vehicles Third Party Risks) Act* as this Honorable Court may order.
 - viii. The Applicant stands to suffer substantial loss and damages if the orders sought herein are not granted and further that the Appeal will be rendered nugatory.
 - ix. That there will be no loss occasioned to the Plaintiff/Respondent if the orders sought herein are granted.
 - x. That the judgment amount, which is the subject matter is substantial and should the execution process commence the Applicant stands to suffer irreparable loss and prejudice as the ability of the Respondent herein to refund the decretal amount is unknown.
 - xi. That this Honourable Court has powers to grant the orders sought herein in the interest of justice and fairness.

And which application is further supported by the annexed affidavit of Daniel Ng'ang'a Mwangi and any other or further evidence to be adduced at the hearing hereof.



Respondents Written Submissions

3. That, conditions for granting stay of execution is as was held in the case of Elena Doudoladova Korir -vs- Kenyatta University [2014]eKLR Justice Nzioki wa Makau had this to say:-

“the application must meet a criteria set out in precedents and the criteria is best captured in the case of Halal & another -vs- Thornton & Turpin Ltd where the Court of Appeal (Gicheru J. A. Chesoni & Cockar Ag JA) held that

“The High Court’s discretion to order stay of execution of its order or decree is fettered by three conditions, namely: - sufficient cause, Substantial loss would ensue from a refusal to grant stay. The Applicant must furnish security: the application must be made without unreasonable delay.”

4. As to whether the Applicant will suffer any loss if the Application herein is not allowed the Respondent contends that, Order 42 Rule 6 (2) (a) clearly states that:-

“No order for stay of execution shall be made under sub rule (1) unless 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”.

5. That the Applicant has not demonstrated the substantial loss or the exact loss they will suffer should the application herein be dismissed.

6. The Respondent relies on the case of Equity Bank Limited Vs Taiga Adams Company Limited Civil Appeal No. 722 of 2000 as cited in the case of Luxus Woods (K) Limited v Patrick Amugune Kamadi [2016] eKLR the court stated as follows: -

“In the application before me, the Applicant has not shown or established the substantial loss that would be suffered if this stay is not granted. The only way of showing or establishing substantial loss is by showing that if the decretal sum is paid to the Respondent - that if execution is carried out - in the event the appeal succeeds the Respondent would not be in a position to pay - reimbursement as he/it is a person of no means. Here, no such allegation is made much less established by the Appellant/Applicant.”

7. The Respondent relies on the case of Mutua Kilonzo -vs- Kioko David Machakos [2008] eKLR the court dismissed an application for stay pending appeal for monetary decree as the applicant failed to prove how he will suffer substantial loss stated that:

“To my mind, the Applicant has failed to establish what loss he will suffer if the decree is executed. I say this with respect because Lillian Munyiri aforesaid is an officer at Gateway Insurance Company Ltd and has not stated that she personally knows the means of the Respondent. She merely states that from evidence at the trial he is a man of straw. How that conclusion is reached and based on what evidence, I cannot tell. It is now a catchphrase that every Respondent in an application for stay of execution is called a man of no means. That is all fine if there is evidence to back up that position. If for example, the job done or other



means of living are clearly deponed to, then it is easy to fathom what means the Respondent has. Ringera J in Lalji Bhimji put it succinctly when he stated thus:

“...he (the applicant) must persuade the court that the decree holder is a man of straw from whom it will be nigh to impossible or at least very difficult to obtain back the decretal amount in the event the intended appeal succeeding. Such persuasion must spring from affidavits or evidence on record.”

8. To substantiate the same, the Respondent is guided by the case of Kenya Shell Limited V Benjamin Karuga Kibiru & Another (1986) eKLR where the court stated that:

“It is not normal in money decrees for the appeal to be rendered nugatory, if payment is made.”

9. That, while still in the case of Kenya Shell Limited v Benjamin Karuga Kibiru & another [1986] eKLR. The Applicant sought for stay of execution pending the determination of appeal on grounds that if the same was not granted and the respondent proceeds with execution it will suffer substantial loss. The respondent submitted that there was no evidence that Kenya Shell, as the proposed appellant, will suffer substantial loss. The court in its Ruling stated that;

“It is not sufficient by merely stating that the sum of Kshs. 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? In an application of this nature, the applicant should show the damages it would suffer if the order for stay is not granted. By granting a stay would mean that status quo should remain as it were before judgment. What assurance can there be of the appeal succeeding? On the other hand, granting the stay would be denying a successful litigant of the fruits of his judgment. The Applicant has not given to court sufficient materials to enable it to exercise its discretion in granting the order of stay.”

10. It is the Respondent’s submission therefore that, the Applicant has failed to prove this allegation under this limb and therefore their application ought to be dismissed with costs to the Respondent.
11. The Respondent therefore pray that this application be dismissed with costs to the Respondent and in the event that the Honourable Court is inclined to allow it then we pray that the court orders the applicant to deposit 3/4 of the judgment sum plus costs to the Respondent as security and the balance be deposited in court as security pending the hearing and determination of the appeal and rely in the case of Amoke Otieno Parcal v Melvin Anyango Owuor [2022] eKLR.

Analysis & Determination

12. That the conditions to be met before stay is granted is provided by Order 42 Rule 6(2) as follows:-

“No order for stay of execution shall be made under sub rule (i)” Unless:-

The court is satisfied that substantial loss may result to the applicant unless the order is made.

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.



13. The Court of Appeal in *Butt vs Rent Restriction Tribunal* (1982) KLR 417 gave guidance on how a court should exercise discretion and held that:

“The power of the court to grant or release an application for stay of execution is a discretionary power.

The court in exercising its discretion whether to grant or refuse an application for stay will Consider the special circumstances of the case and unique requirements.

The court in exercising its powers under order XLI Rule 4(2)(b) of Civil Procedure Rules can order security upon application by either party or on its own motion. Failure to put security for costs as awarded will cause the order for stay of execution to lapse”.
14. The court shall preoccupy itself to the preconditions for granting stay of execution where there exists a judgment legally entered in favour of one party against the other and the Applicant fails to offer security for costs.
15. In the case of *Gianfranco Manenthi & Another vs. Africa Merchant Assurance Company Ltd* [2019] eKLR, the Court thus held that:-

“... the applicant must show and meet the condition of payment of security for due performance of the decree. Under this condition a party who seeks the right of appeal from money decree of the lower Court for an order of stay must satisfy this condition on security. In this regard, the security for due performance of the decree under order 42 rule 6(1) of the Civil Procedure Rules, it is trite that the winner of litigation should not be denied the opportunity to execute the decree in order to enjoy the fruits of his judgment in case the appeal fails.
16. Further, Order 42 should be seen from the point of view that a debt is already owed and due for payment to the successful litigant in a litigation before a Court which has delivered the matter in his favour. This is therefore to provide a situation for the Court that if the Appellant fails to succeed on appeal there could be no return to status quo on the part of the plaintiff to initiate execution proceedings where the judgement involves a money decree. The Court would order for the release of the deposited decretal amount to the respondent in the appeal ... Thus the objective of the legal provisions on security was never intended to fetter the right of appeal. It was also put in place to ensure that Courts do not assist litigants to delay execution of decrees through filing vexatious and frivolous appeals. In any event, the issue of deposit of security for due performance of decree is not a matter of willingness by the applicant but for the Court to determine
17. The Court equally notes that the Applicants challenge on Appeal is on a ruling post facto of the judgment dated 15th February 2022, and that the Judgment remains unchallenged to date.
18. All the three pre-conditions for grant of stay have not been demonstrated, the Court finds that a substantial loss may be occasioned with the execution against the Applicant who has not offered any security while craving for the relief.
19. Accordingly, I hereby disallow the Application dated 14th April 2025 for want of merit, and dismiss the same, with costs to the Respondent.
20. However, this Court as a Court of Equity and in balancing the interests of the parties is inclined to direct as follows: -



- a. A Conditional order of stay against execution is hereby issued against judgment and consequent decree in Nakuru CM' Court MCCCNo. E 621 of 2023 Susan O. Odhiambo Vs Matunda (fruit) bus limited & another, pending the hearing and determination of the Appeal.
- b. The Applicants shall Pay to the Respondent, 50% the assessed Decretal sum in Nakuru CM' Court MCCC No. E 621 of 2023 Susan O. Odhiambo Vs Matunda (fruit) bus limited & another, of Kshs 4,497,128/= within thirty (30) days of this Ruling;
- c. The Applicants shall deposit in Court, 50% the assessed Decretal sum in Nakuru CM' Court MCCCNo. E 621 of 2023 Susan O. Odhiambo Vs Matunda (fruit) bus limited & another, of Kshs 4,497,128/= within thirty (30) days of this Ruling;
- d. The Respondent's shall have costs of the Application assessed at Kshs. 20,000 to be paid within thirty (30) days of this Ruling;
- e. In the event of default of (b) or (c) above, The Conditional Order granted shall automatically lapse, and the Respondent shall be at liberty to execute;
- f. The Appellants shall file and serve a record of appeal within sixty (60) days of this Ruling;

SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 27TH DAY OF JANUARY 2026

MOHOCHI S. M.

JUDGE

