

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
HCCA NO. E105 OF 2025
THE GUARDIAN COACH
LIMITED.....APPELLANT/APPLICANT

VERSUS

CHERUGUT JUDITH & WINNY CHEPNGETICH (suing as the legal representatives of the estate of COLLINS KIPROTICH, deceased).....RESPONDENTS

(Being an appeal from the whole judgment delivered by Hon. Tito Gesora (Chief Magistrate) on the 25th day of November 2025 in Kericho CMCC No. E265 of 2022)

RULING

1. Before this Court for determination is a Notice of Motion application dated 13th January 2026, filed by the Appellant/Applicant, The Guardian Coach Limited. The application is brought under the provisions of Order 42 Rule 6 of the Civil Procedure Rules, among other enabling provisions of the law.

2. The Applicant seeks the following orders;

a) That this Honourable Court be pleased to grant a stay of execution of the judgment/decreed in Kericho CMCC No. E265 of 2022 delivered on 25th November 2025, pending the hearing and determination of this appeal.

- b) That the court be pleased to stay the taxation of party costs in Kericho CMCC No. E265 of 2022 pending the hearing and determination of this appeal.***
- c) That upon grant of the stay orders, this Honourable Court be pleased to order that the Applicant do provide sufficient security by depositing the entire judgment sum in court to secure the judgment in Kericho CMCC No. E265 of 2022 for Kshs. 2,797,130/= pending hearing and determination of this appeal.***
- d) That costs of this application to abide the outcome of the appeal.***

2. The application is supported by the annexed affidavit of DENNIS MARAGIA MOKUA, a manager of the Applicant, sworn on 13th January 2026.

3. The Applicant avers that judgment was entered against it for a sum of Kshs. 2,797,130/= plus costs and interest. Being aggrieved by the said judgment, the Applicant has lodged a Memorandum of Appeal (annexed as "annexure-2"), which it believes has high chances of success.

4. The Applicant contends that if the decretal sum is paid to the Respondents and the appeal ultimately succeeds, the Respondents, who they describe as "persons of straw," will be unable to refund the money, thereby rendering the appeal nugatory. It is argued that the Applicant stands to suffer

substantial loss if its properties are attached and sold in execution of the decree.

5. The Applicant asserts that the application has been made without unreasonable delay and that its insurer is ready and willing to furnish security by depositing the full judgment sum in court, as expressly prayed in the motion.

6. At the time of writing this ruling, there is no replying affidavit or submissions filed by the Respondents challenging the application. The application is therefore unopposed. However, the court must still satisfy itself that the Applicant has met the legal threshold for granting the orders sought.

7. I have carefully considered the Notice of Motion, the supporting affidavit, the annexures, and the relevant provisions of the law. The main issue for determination is whether the Applicant has satisfied the conditions for granting an order for stay of execution pending appeal.

8. The legal framework for granting such orders is found in Order 42 Rule 6(2) of the Civil Procedure Rules, which provides:

"No order for stay of execution shall be made under subrule (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."

9. The Applicant argues that the Respondents are "persons of straw" and will be unable to refund the decretal sum if the appeal succeeds. This is a recognized ground for substantial loss. The primary purpose of stay of execution is to preserve the subject matter of the appeal so that the success of the appeal is not rendered nugatory. If the money is paid to a party who cannot refund it, the Appellant's right of appeal would be rendered illusory. In the absence of any evidence from the Respondents to rebut the claim that they are of limited means, this court is inclined to accept the Applicant's assertion. The decretal sum of Kshs. 2,797,130/= is substantial, and its unconditional release to the Respondents could indeed expose the Applicant to substantial loss.

10. The impugned judgment was delivered on 25th November 2025. The instant application was filed on 13th January 2026. The period between the judgment and this application is approximately one and a half months. This period, particularly taking into account the Christmas and New Year holidays, cannot be said to be inordinate. I find that the application has been made without unreasonable delay.

11. The Applicant has unequivocally expressed its readiness, through its insurer, to furnish security by depositing the entire

decretal sum of Kshs. 2,797,130/= in court, as expressly prayed in the motion. This offer demonstrates good faith and addresses the court's primary concern of securing the Respondent's interest in the decree should the appeal fail. This is a satisfactory proposal for the provision of security and is precisely the order the Applicant seeks.

12. On the prayer for stay of taxation, I find this to be a reasonable ancillary order. If taxation proceeds and a certificate of costs is issued, it would create another decree capable of execution, potentially complicating the appeal. It is in the interest of justice to maintain the status quo regarding costs pending the outcome of the main appeal.

13. On costs the applicant prays that costs of this application abide the outcome of the appeal. Section 27 of the Civil Procedure Act provides that costs follow the event, unless the court for good reason orders otherwise. Since this application is interlocutory and the main appeal is yet to be determined, it is just that the costs be determined by the outcome of the main appeal.

14. For the reasons set out above, I find the notice of motion dated 13th January 2026 is merited giving rise to issuance of the following orders;

a) An Order for stay of execution of the judgment and decree in Kericho CMCC No. E265 of 2022 delivered on 25th November 2025 is granted pending the hearing and determination of this appeal.

- b) An order for Stay of Execution of taxation of party costs arising from Kericho CMCC No. E265 of 2022 pending the hearing and determination of the said appeal.***
- c) The grant of stay is conditional upon the Applicant, within thirty (30) days from the date of this ruling, depositing the entire decretal sum of Kshs. 2,797,130/= in court as security pending the hearing and determination of the appeal. In default of this condition, the stay orders shall automatically lapse.***
- d) The costs of this application shall abide the outcome of the main appeal..***

Dated, signed and delivered at Kericho this 12th day of March, 2026.

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**J. K. SERGON
JUDGE**

In the Presence of:-

C/Assistant - Rutoh

Miss Ongwacho for Appellant

Obwa for Respondent