

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
HCCA NO. E107 OF 2025

THE GUARDIAN COACH LIMITED.....
APPELLANT/APPLICANT

VERSUS

KIPKOECH RONO RONALD & GLADYS RONO (suing as the
Legal representatives of the estate of BRIAN
KIPKORIR KOECH
deceased).....RESPONDENTS

(Being an appeal from the whole judgment delivered by Honourable Tito Gesora Chief Magistrate on the 25th day of November 2025 in Kericho CMCC No. E266 of 2022)

RULING

1. Before this Court for determination is a Notice of Motion application dated 13th January 2026. It is brought under the provisions of Section 3A of the Civil Procedure Act, Order 42 Rule 6, Order 50 Rule 5, Order 51 Rule 16(3), and Order 22 Rule 22 of the Civil Procedure Rules, 2010 and all other enabling provisions of the law.

2. The application seeks as follows;

a) THAT this honourable court be pleased to grant Stay of execution of the Judgment/ decree in Kericho CMCC number E266 of 2022 delivered on the 25th day of November pending hearing and determination of this appeal.

b) THAT the honourable court be pleased to stay taxation of party and party costs pending hearing of the and appeal.

c) Provision of security by depositing the entire judgment sum in court.

d) Costs of the application to abide the outcome of the appeal.

3. The application is supported by the annexed affidavit of **DENNIS MARAGIA MOKUA**, a manager of the Appellant/Applicant, sworn on even date, and on the grounds set out on the face of it.

4. The Applicant contends that judgment was entered against it in the lower court for the sum of Kshs. 2,797,130/= plus costs and interest. Being aggrieved by the said judgment on both liability and quantum, it has lodged an appeal, which according to it has high chances of success. It is feared that if execution proceeds, the appeal will be rendered nugatory as the Respondents are alleged to be persons who may not be able to refund the decretal sum if the appeal succeeds.

5. I have carefully considered the Notice of Motion, the Supporting Affidavit, the annexures thereto, and the law.

6. The legal framework for granting a stay of execution pending appeal is found in Order 42 Rule 6(2) of the Civil Procedure Rules, 2010, 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."

7. The Applicant has deponed that the decretal sum of Kshs. 2,797,130/= is substantial. It is further deponed, that the Respondents are "persons of straw" and would be unable to refund the decretal sum if the appeal succeeds. This constitutes substantial loss. In the absence of any evidence from the Respondents to controvert this allegation, I accept the Applicant's deposition on this point.

8. On delay, the judgment was delivered on 25th November 2025, and this application was filed on 13th January 2026. This period is reasonable and does not constitute unreasonable delay.

9. The Applicant also seeks for stay of taxation of party and party costs in the lower court pending the hearing and determination of the appeal. Taxation of costs is a consequential proceeding arising from the judgment. If execution of the main decree is stayed, it would be illogical to allow the taxation of costs to proceed, as costs are part and parcel of the decree. Further,

allowing taxation to proceed would lead to a multiplicities of proceedings and potentially render the appeal nugatory.

10. The Applicant prays that upon grant of Prayers 4 and 6, this Honourable Court be pleased to order that the Applicant do provide sufficient security by depositing the entire judgment sum of Kshs. 2,797,130/= in court to secure the decree pending appeal. This demonstrates good faith on the part of the Applicant. The purpose of security is to protect the interests of the Respondent, ensuring that if the appeal fails, the decree can still be satisfied. The Applicant's offer to deposit the entire decretal sum is an adequate security.

11. The Applicant further 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.

12. Consequently, the application is found to be meritorious giving rise to issuance of the following orders;

a) An order is hereby granted staying the execution of the judgment and decree in Kericho CMCC No. E266 of 2022 delivered on 25th November 2025, pending the hearing and determination of the appeal herein on condition that the Applicant/Appellant do deposit the entire decretal sum of Kshs. 2,797,130/= (Kenya

Shillings Two Million, Seven Hundred and Ninety-Seven Thousand, One Hundred and Thirty Only) in court, within thirty (30) days from the date hereof. In default of such deposit, the stay orders shall automatically lapse.

b) There shall be a stay of taxation of party costs arising from Kericho CMCC No. E266 of 2022 pending the hearing and determination of this appeal.

c) The costs of this application shall abide the outcome of the 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

Obura for Respondent