

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAKURU
ENVIRONMENT AND LAND CASE NO. 70 “B” OF 2021

LAWRENCE

KARANI.....PLAINTIFF

VERSUS

SHUNEM ACADEMY LIMITED1ST

DEFENDANT

GRACE MUKAMI MWANIKI2ND

DEFENDANT

R U L I N G

1. This ruling is in respect of the Notice of Motion dated 19th November 2025, brought under **Section 1A,1B, and 3A of the Civil Procedure Act, Cap 21 Laws of Kenya, Order 42 rule 6 and Rule 7 of the Civil Procedure Rules** and under all other enabling provisions of the law.
2. It seeks orders: -
 1. Spent
 2. Spent
 3. That Pending hearing and determination of the 2nd Defendant’s intended Appeal, this Honorable Court be pleased to stay its judgment delivered on the 19th September 2025 and the execution of any Decree arising therefrom.
 4. Costs of this application be provided for.

3. The grounds are on the face of the Application and are set out in paragraphs 1 to 5.
4. The Application is supported by the Affidavit sworn by Grace Mukami Mwaniki, the 2nd Defendant herein on the 19th November 2025.
5. The Application is opposed. There is a Replying Affidavit sworn by Lawrence Karani, the Plaintiff/Respondent on the 29th January 2026.
6. The Notice of Motion was canvassed by way of written submissions.
7. It is the 2nd Defendant/Applicant's submissions that the application has been filed without inordinate delay. That judgment was delivered on the 19th September 2025 while this application was filed on 19th November 2025.
8. It is further submitted that the 2nd Defendant/Applicant will suffer substantial loss if stay is not granted. That there is no credible evidence that the plaintiff possesses the financial ability to refund the decretal sum should the intended Appeal succeed.
9. It is submitted that the Plaintiff/Respondent herein bears the burden of proving that he is not impecunious.

Reliance is placed on the case of ***National Industrial Credit Bank Limited -vs- Aquinas Francis Wasike & Another (UR) Nairobi Civil application No.238 of 2005.***

It is the 2nd Defendant/applicants position that the Plaintiff has failed to discharge this burden of proof.

10. The 2nd Defendant/Applicant further submitted that she stands to suffer substantial loss should the stay of execution not be granted. It is her case that the propriety of imposing personal liability on her for what was essentially a corporate obligation forms one of the central issues in the intended Appeal. That execution against her personally at this stage would expose her to immediate financial prejudice before that question is conclusively determined on appeal.
11. It is further submitted that the 2nd defendant is willing to deposit the entire decretal sum in a joint interest earning account in the name of counsel for both parties pending the determination of the appeal. Reliance is placed in the case of ***RWW -vs- EKW (2019) eKLR.***
- The 2nd defendant prays that the Application be allowed.
12. It is the Plaintiff/Respondents' submissions that this Application was brought sixty (60) days after the delivery of judgment. Reliance is placed on the case of ***Jaber Mohsen Ali -vs- Priscillah Boit & Another (2014) eKLR.***
- It is further submitted that no explanation for the delay has been given.
13. It is also submitted that the plaintiff is ready, willing and able to refund the 2nd Defendant the decretal sum paid or recovered in the unlikely event the appeal succeeds. Reliance is placed on the case ***Machira t/a Machira & Co Advocates -vs- East Africa Standard (No.2) (2002) KLR 63 as cited with approval in Antoine Ndiaye -vs- African Virtual University (2015) eKLR.***

14. It is submitted that the evidence of income adduced by the Plaintiff has not been shaken hence he will be able to refund the Decretal sum should the Appeal succeed.
15. It is submitted that the three conditions set out **under Order 42 Rule 6** are mandatory, conjunctive and sequential. That if the first two are not met, then the Application ought to be dismissed. He prays that Application be dismissed with costs.
16. I have considered the Notice of Motion, the affidavit in support, their response thereto, the written submission and the authorities cited. The issues for determination are: -
- (i). **Whether the Notice of Motion is merited.**
 - (ii). **Who should bear costs of the Application?**
17. **Order 42 rule 6 (2) of the Civil Procedural rules** provides that:-
- “(2) 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.”**
18. In ***Peter Ondade t/a Spreawett Chemist -vs- Josephine Wangari Karanja (2006) eKLR L Kimaru J*** (as he then was) stated as follows :-

“The issue for determination by the court is whether the Applicant has established a case to enable the court to grant stay of execution sought. For the court to grant stay of execution it must be satisfied that substantial loss may result to the Applicant if stay is not granted. Further, the applicant must have filed the application for stay of execution without unreasonable delay. Finally, the Applicant must provide security as may ultimately be binding on him”

19. I have gone through the 2nd Defendant’s affidavit. I find that a delay of sixty (60) days cannot be construed as inordinate delay.
20. It is the 2nd Defendant’s case that she will suffer substantial loss if the stay of execution is not granted. It is her case that the Plaintiff may not be able to refund the Decretal sum should the appeal succeed.
21. The Plaintiff on the other hand states that he is ready, willing and able to refund the Decretal sum if the appeal succeeds.
22. I have considered the rival positions on this issue and the case of ***Bult-vs- Rent Restriction Tribunal (1982) KLR 417*** and my view is that there is need to balance the interest of the two parties.
23. I am satisfied that the 2nd Defendant has demonstrated that she will suffer substantial loss if these orders are not granted.
24. I find merit in this application and I grant the orders sought namely: -

(a) That a stay of execution hereby granted against the judgment delivered on the 19th September 2025 and consequential decree arising therefrom pending the hearing and determination of the intended Appeal.

On condition:- that the 2nd Defendant does deposit the

(i) Decretal sum which is Kshs1,500,000/= in a joint interest earning account in the name of counsel for the plaintiff and the 2nd Defendant within forty-five (45) days from the date of this ruling.

In Default: The orders of stay shall lapse automatically.

(b) That cost of this application shall be borne by the 2nd defendant.

Ruling dated, signed and delivered virtually at Nakuru this 12th day of March 2026.

**L KOMINGOI
JUDGE**

In presence of: -

Mr. Gatonye for the Plaintiff/Respondent

Ms. Matase for the 2nd Defendant also holding brief for Mr. Mutua for the 1st Defendant

Court assistant : Nelima