



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Kenya Wildlife Service v Gikandi (Civil Appeal E181 of 2025)
[2026] KEHC 3505 (KLR) (16 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3505 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E181 OF 2025
SM GITHINJI, J
MARCH 16, 2026**

BETWEEN

KENYA WILDLIFE SERVICE APPELLANT

AND

AMOS KIOGORA GIKANDI RESPONDENT

RULING

1. For determination is the Notice of Motion dated 17/9/2025 under Sections 1A, 1B and 3A of the [Civil Procedure Act](#), Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules, seeking that:
 1. Spent
 2. Spent
 3. This Honourable Court grant a Stay of Execution of the Judgment and Decree of Honourable H. Nyamweya (Adjudicator/Resident Magistrate) delivered on the 31st July, 2025 pending hearing and determination of this appeal.
 4. Spent
 5. Costs of this Application be in the cause.
2. The grounds upon which the application is premised are set out in the body of it and supporting affidavit of Benta Musima, the Applicant's Acting Corporation Secretary sworn on even date. Aggrieved by the trial court's judgment, the Applicant has appealed against it, and unless the orders sought are granted, execution shall proceed, thus occasioning the Applicant substantial and irreparable loss.



3. The Respondent swore a replying affidavit on 7/11/2025 in opposition to the application. He averred that the Applicant had neither demonstrated what substantial loss it will suffer nor furnished security for the performance of the decree to warrant grant of the orders sought.
4. The Respondent further filed grounds of objection dated 7/11/2025 that;
 1. The applicant has not shown good grounds why this court should interfere with the discretion of the lower court.
 2. The applicant has failed to demonstrate what Substantial loss he may face unless a stay of execution is issued.
 3. No security for the performance of the decree of the lower court has been offered or furnished.
 4. The application is seeking for an irregular order in law as the matters being Meru SCCC No. E264, E266, E268, E270, E274, E278, E280, E282, E284, E286, E290, E296, E297, E299, E301, E303, E319, E321 all of 2025 are separate matters tried distinctively with each claimant testifying dependently and calling expert witnesses and judgment entered for each and every claimant.
 5. The applicant has filed independent appeals over the judgments in Meru SCCC No. E264, E266, E268, E270, E274, E278, E280, E282, E284, E286, E290, E296, E297, E299, E301, E303, E319, E321 all of 2025 as demonstrated by the memorandum of appeals attached to the application and there is no application for stay of execution filed in the respective appeal and the applicants cannot use shortcut to deny the claimants rights to be heard in the application for stay of execution of regular court orders.
 6. The orders of temporary stay issued in the instant application is irregular as it cannot and should not apply to any other claim or appeal except the instant appeal as there is no consolidation and other claimants in the mentioned claims have been denied the right to a fair hearing as they cannot respond to the application and there is no application against them yet the execution of their judgments have been temporarily stayed.
 7. The temporary orders issued against other claimants in Meru SCCC No. E264, E266, E268, E270, E274, E278, E280, E282, E284, E286, E290, E296, E297, E299, E301, E303, E319, E321 all of 2025 be lifted as they are irregular orders denying the claimants in the mentioned claims right to fair hearing and the rights to enjoy the fruits of their judgments.
5. Gedion K. Mutai, the Applicant's Legal Officer swore a further affidavit on 13/11/2025 in support of the application. He averred that the Applicant will suffer substantially if the decretal sum is paid to the Respondent and the appeal ultimately succeeds.
6. The application was canvassed by way of written submissions, which were duly filed by counsel.

Determination

7. Order 42 Rule 6 (2) of the Civil Procedure Rules provides as follows; "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."



8. The application was filed on 18/9/2025, while the impugning judgment was delivered on 31/7/2025. That delay is not so inordinate as to be deemed unreasonable.
9. The cornerstone consideration in every application for stay is substantial loss, and the burden of proof lies on the Applicant, as was held by the Court of Appeal in *Kenya Shell Limited v Benjamin Karuga Kibiru & another* [1986] KECA 94 (KLR) that; “It is usually a good rule to see if order XLI rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the Applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the corner stone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore without this evidence it is difficult to see why the Respondents should be kept out of their money.”
10. A money decree is not, by itself, a sufficient ground for stay of execution. The Applicant must demonstrate that:-
 1. Substantial loss may result if stay is not granted, such as the inability to recover the money if the appeal succeeds.
 2. The Respondent may be unable to refund the decretal sum; commonly referred to as the Respondent being a “man of straw.”
 3. Security for the due performance of the decree is provided.
11. The Applicant contends that it stands to suffer substantial loss if the decretal sum is paid to the Respondent, whose capability to refund, in the event the appeal succeeds, is unknown. Whilst the Respondent prays for the dismissal of the application, he is amenable to grant of conditional stay upon payment of half the decretal sum and deposit of the balance in a joint interest earning account.
12. In view of the Respondent’s willingness to grant of conditional stay, I deem it fit to compromise the application dated 17/9/2025 in following terms:
 1. Stay of execution of the judgment and decree in Meru SCCC No. E264/2025 is hereby granted, pending the hearing and determination of the appeal herein, on condition that;
 - i. The Applicant shall pay to the Respondent ½ the decretal sum being Ksh. 435,338 and deposit the balance of Ksh. 435,338 in a joint Advocates’ interest earning account within 30 days from the date hereof.
 - ii. The Applicant to compile, file and serve the Record of Appeal within 45 days from the date hereof.
 - iii. In default of any of the aforementioned conditions, the stay hereinabove granted shall lapse, and the Respondent shall be at liberty to execute.
 - iv. Orders herein have no effect at all on SUCC No. E264, E266, E268, E270, E274, E278, E280, E282, E284, E286, E290, E296, E297, E299, E301, E303, E319 & E321 all of 2025. Temporary orders issued in these files are accordingly vacated.

DATED AND DELIVERED AT MERU THIS 16TH DAY OF MARCH, 2026.

S.M. GITHINJI- JUDGE

16/3/2026



Parties:-

Mr. Mutai for the Appellant.

Ms. Aketch for the Respondent.

