



REPUBLIC OF KENYA



KENYA LAW
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**Kenya Wildlife Service v Mwengwa (Miscellaneous Civil Application
E128 of 2025) [2026] KEHC 3434 (KLR) (16 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3434 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS CIVIL APPLICATION E128 OF 2025**

**SM GITHINJI, J
MARCH 16, 2026**

BETWEEN

KENYA WILDLIFE SERVICE APPLICANT

AND

TERETHINA MWENGA RESPONDENT

RULING

1. For determination is the Notice of Motion dated 18/9/2025 under section Sections 1A, 1B, 3A and 79G of the *Civil Procedure Act*, Order 42 Rule 6, Order 50 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 Habrovinah Nyamweya (Adjudicator/Resident Magistrate) delivered on the 14th August, 2025 in Meru Sccc No. E323 Of 2024: Terethina Mwengwa Vs Kenya Wildlife Service pending hearing and determination of the intended appeal.
 4. This Honourable Court be pleased to grant the Applicant leave to appeal out of time against the whole judgment of Honourable Habrovinah Nyamweya (Adjudicator/Resident Magistrate) delivered on the 14th August, 2025 in Meru Sccc No. E323 Of 2024: Terethina Mwengwa Vs Kenya Wildlife Service.
 5. Spent
 6. 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 is desirous of appealing against it, and unless the orders sought are granted, execution shall proceed, thus occasioning the Applicant substantial and irreparable loss. The delay in filing the appeal, which is arguable, within time was occasioned by lack of filing fees.
3. The Respondent swore a replying affidavit on 7/11/2025 in opposition to the application. She 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. According to her, no reasonable explanation has been proffered why the appeal was not filed within time, and she prayed for the dismissal of the application with costs.
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. E327, E329, E332, E334, E336, E338, E340, E342, E344 and E347 are separate matters tried distinctively with each claimant testifying independently and calling expert witnesses and judgment entered for each and every claimant and there is no application filed in court to appeal out of time in the above matters and as such the orders for temporary stay of execution issued in the instant application cannot and should not apply to any other claim as it denies the respective applicants right to fair hearing as there is no consolidation nor leave granted for consolidation of matters.
 5. The other claimants have been even denied a right to fair hearing as there is no application for stay of execution against them and there is no appeal nor application to appeal out of time against their judgments which they can even respond to, yet there is stay already.
 6. The temporary orders issued against other claimants in Meru SCCC No. E327, E329, E332, E334, E336, E338, E340, E342, E344 and E347 be lifted as they are irregular orders staying execution of claims which have not been appealed against, there is no application to appeal against them filed in court and there is no stay of execution application filed in court which the claimants can even be fairly heard on.
 7. The instant application cannot apply to Meru SCCC No. E327, E329, E332, E334, E336, E338, E340, E342, E344 and E347 as the matters were never consolidated and there is no leave of court consolidating them as such applying the order to Meru SCCC No. E327, E329, E332, E334, E336, E338, E340, E342, E344 and E347 is irregular and fatally defective.
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. On stay, 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 21/9/2025, while the impugning judgment was delivered on 14/8/2025. 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. On her part, the Respondent insists on the dismissal of the application, without rebutting the assertion of her inability to refund the decretal sum, if the appeal is successful. That apprehension constitutes substantial loss.
12. I thus find that the Applicant has established that it will suffer substantial loss if the sought stay of execution is denied.
13. On leave to appeal out of time, I find that while the delay of less than a month cannot be termed as inordinate, the reason thereof is implausible and inexcusable.
14. Nonetheless, in the interest of justice and the overriding objectives under sections 1 and 3 of the [Civil Procedure Act](#), I will grant the leave sought.
15. Accordingly, the application dated 18/9/2025 is merited and it is allowed in the following terms:
 1. Leave to appeal out of time is hereby granted.
 2. Stay of execution of the judgment and decree in Meru SCCC No. E323/2024 is hereby granted, pending the hearing and determination of the appeal herein, on condition that;
 - i. The Applicant shall deposit the entire decretal sum of Ksh. 823,146 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. The finding herein relates only to this file and does not apply at all to SCCC No. E327, E329, E332, E334, E336, E338, E340, E342, E344 and E347. 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:-

Ms. Aketch for the Respondent.

Mr. Mutai for the Appellant/Applicant.

