



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYANDARUA

MISCELLANEOUS CIVIL CASE NO. E024 OF 2025

***[CONSOLIDATED WITH MISC. CIVIL CASE NOS. E025 OF 2025, E026 OF 2025, E027 OF 2025 AND E028
OF 2025]***

BETWEEN

LEGACY LUXURY SHUTTLE LTD..... APPELLANT/APPLICANT

AND

CALVINCE ACHIENG.....RESPONDENT

RULING

1. Legacy Luxury Shuttle Ltd, the applicant, moved the court through a Notice of Motion dated the 19th day of November 2025 in all five files. The application is brought under sections 1A, 1B, 3A, 79G, and 95 of the Civil Procedure Act, Order 42 Rule 6(1), and Order 51 Rule 1 of the Civil Procedure Rules. The following orders are being sought:
 - a) This application be certified urgent, service is to be dispensed with thereof, and the same is to be heard ex-part in the first instance. [Spent]
 - b) The firm of M/s & KRK Advocates LP be deemed to be properly on record as advocates for the defendant/applicant in place of M/s Kairu & MC court Advocates.
 - c) The honourable court be pleased to issue an order of stay of further execution of the judgments delivered by this honourable court on 17th July, 2025, pending the hearing and determination of this application.
 - d) This Honourable court be pleased to grant an interim order for stay of execution of the proclamation notices dated 16/9/2025 and warrants of attachment dated the same date.

- e) This honourable court be pleased to grant the applicant an order to settle the decretal sums in each of the filed in two equal monthly instalments to be paid on or before the 5th day of each month commencing on the 5th November, 2025, till payment in full.
- f) This honourable court be pleased to issue an order directing the auctioneers, Elimonyaco Auctioneers, to tax their bill in court.
- g) The orders issued herein do apply to the other files in the series being Engineer CMCC E11/2023, E110/2023, E112/2023, E114/2023, E113/2023, E109/2023, E115/2023 and E105/2023.
- h) This honourable court be pleased to grant any other order it may deem fit in the circumstances
- i) That the costs of this application be the cause.

2. The application is premised on the following grounds:

- a) That judgments in the cited suits were delivered on 17/7/2025, with the defendant /applicant held liable and the defendant to settle the suits.
- b) The insurer was in the process of processing the decretal sum to be remitted upon the respondent when the applicant was proclaimed.
- c) The applicant is desirous and willing to settle the amounts as per the warrant and requires time to do so.
- d) The said moral properties which have been proclaimed/attached might be advertised and/or sold, yet the applicant has not neglected, refused and /or ignored to make payment.
- e) The said payment is in the process of being concluded, and the applicant prays that they be given time to do so.
- f) That from the reasons advanced is only fair that the orders sought therein be granted to protect the substratum of the application herein, and it is imperative that the subject be protected and/or the motor vehicles stated above be preserved.
- g) The applicant's property be advertised, and if subsequent sale proceeds are obtained, then the applicant stands on the precipice of suffering further loss and damage and such action, if allowed to proceed unchecked, shall render the application herein nugatory and moot.

- h) All circumstances considered; respondent will not suffer any prejudice if the application is allowed.
 - i) The applicants' Insurer, Ms Direct Line Assurance Co. Ltd, underwent internal strife at the management level, which strife prompted the intervention and/or audit by the Insurance Regulatory Authority, hence a difficulty in handling the approval release and /or payments of any monies and or smooth running of the company.
 - j) That due to the audit, communication with insurers was strained and/or broken down, hence a delay in approvals and processing of payment.
 - k) Further to the above, the applicant's insurer has been dealing with several garnishee orders which have frozen its claims settlement accounts, hence the delay.
 - l) The court has unfettered discretion upon considering the above ground, to allow the application herein.
 - m) The application has been lodged timely and without inordinate delay.
 - n) It is in the interest of justice that this applicant be allowed as prayed.
3. The respondents opposed the application on the following grounds:
- a) The application is an abuse of the court process.
 - b) There is no merit.
4. The applicant seeks to be granted a stay of execution in the decree in Engineer CMCC E11/2023, E110/2023, E112/2023, E114/2023, E113/2023, E109/2023, E115/2023 and E105/2023. It is trite law that an appeal does not operate as a stay of execution. Order 42 Rule 6 of the Civil Procedure Rules states as follows:

No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the court appealed from may order but, the Court Appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

5. The purpose of issuing an order for a stay of execution was explained in the case of **RWW vs EKW [2019] eKLR**, as follows:

The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.

4. The judgments in the cited cases were delivered on July 17, 2025. The resolution of a claim depends on the agreement between the involved parties. Courts generally step in only in exceptional cases to determine payment instalments and their intervals. It is important to show good faith and valid reasons for any inability to comply. There is no evidence suggesting that the court should interfere with the respondents' rights to execution.
5. The applicant was seeking time to make payments and indicated that they were in the process of making payments. This was way back in November 2025. They have had ample time to do so.
6. The lack of merit, and they are dismissed with costs.

Delivered and signed at Nyandarua, this 18th day of March 2026

**KIARIE WAWERU KIARIE
JUDGE**