



REPUBLIC OF KENYA



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**Ngetich v Ruto & another (Civil Appeal E100 of 2025)
[2026] KEHC 3353 (KLR) (12 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3353 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL APPEAL E100 OF 2025
JK SERGON, J
MARCH 12, 2026**

BETWEEN

EDWIN KIPKOSKEI NGETICH APPELLANT

AND

KENNETH KIPNGETICH RUTO 1ST RESPONDENT

ELIUD KIPRONO NGETICH 2ND RESPONDENT

(Being an appeal from the Judgment in Kericho Chief Magistrate's Court Civil Case No. E250 of 2021 delivered on 14th October, 2025 by Hon. F.M. Nyakundi (PM))

RULING

1. Before this Court for determination is the Appellant's/Applicant's Notice of Motion application dated 3rd December, 2025. The application is brought under Order 42 rule 6(1) and (2), Order 51 rule 1 of the Civil Procedure Rules, 2010, and Sections 1A, 1B, & 3A of the [Civil Procedure Act](#).
2. The Applicant seeks the following principal orders;
 - a. Spent.
 - b. Spent.
 - c. That there be an order for stay of execution of the Judgment delivered on 14th October 2025 in the Kericho Chief Magistrate's Court Civil Case No. E250 of 2021 together with a stay of all consequential and/or subsequent proceedings pending the hearing and determination of the Appeal.
 - d. That costs of this application be in cause.



3. The application is supported by the annexed affidavit of Edwin Kipkoskei Ngetich, the Applicant herein, sworn on 3rd December, 2025, and the grounds on the face of it.
4. The Applicant states that he has filed a Memorandum of Appeal dated 6th November, 2025 against the Judgment of the trial court delivered on 14th October, 2025. He is in the process of preparing the Record of Appeal.
5. The Applicant contends that his appeal raises arguable grounds with high probability of success. The core of his appeal is that the Learned Trial Magistrate erred in finding that the 2nd Respondent acted as his duly authorized agent in the sale of motor vehicle registration number KBV 830B. He asserts there was no power of attorney, agency agreement, or written authority to substantiate such a relationship.
6. He further argues that the consideration for the sale was received by the 2nd Respondent personally, not by or on behalf of the Applicant, which negates any agency relationship and demonstrates personal liability on the part of the 2nd Respondent.
7. The Applicant also raises several grounds in the memorandum of appeal which I have considered.
8. On the question of substantial loss, the Applicant depones that he will suffer irreparable harm if execution is effected because;
 - (a) He utilized the motor vehicle as security for a loan from KIE, and the original logbook remains deposited with KIE. He continues to service the said loan.
 - (b) Execution would expose him to serious financial hardship, potential default, and loss of the security.
 - (c) He is not aware that the 1st and 2nd Respondents have any means of refunding the decretal amount should his appeal succeed, exposing him to substantial loss.
9. The Applicant states that the application has been made without unreasonable delay, as judgment was delivered on 14th October, 2025, and the Memorandum of Appeal was filed on 6th November, 2025. He annexes a copy of the plaintiff's Party & Party Bill of Costs filed before court awaiting taxation, upon which the decree will be ripe for execution, demonstrating the imminent threat of execution.
10. The Applicant undertakes to comply with such security as the court may order for the due performance of the decree.
11. The application is opposed. The 2nd Respondent, Eliud Kiprono Ngetich, swore a Replying Affidavit on 3rd March 2026. He deposes that the application is an abuse of court process and ought to be dismissed with costs. He confirms that judgment was entered in favor of the 1st Respondent for Kshs. 1,176,000/-, purchase price plus cost of repair, maintenance and inspection and Kshs. 420,000/- (loss of profit), plus costs.
12. He asserts that the transaction was lawful and supported by proper documentation adduced during hearing, and that he was the agent of the Applicant in the said transaction. He contends that the application is not made in good faith but is only aimed at unjustly delaying proceedings. He states that he is advised by his advocates that the appeal does not have a chance of success. He further states that the Applicant has not specifically established the substantial loss he will incur should the stay orders not be granted.
13. In the event that the court grants stay, the 2nd Respondent prays that the costs assessed be deposited in court.



14. There is no response on record from the 1st Respondent, Kenneth Kipngetich Ruto.
15. Having considered the application, the supporting affidavit, the replying affidavit of the 2nd Respondent, and the relevant law, the singular issue for determination is whether the Applicant has met the threshold for grant of orders of stay of execution pending appeal.
16. The legal framework for granting a stay of execution pending appeal is well settled. It is governed by Order 42 Rule 6(2) of the Civil Procedure Rules, 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.”
17. The Court’s discretion to grant stay must be exercised judiciously. An applicant must satisfy all three conditions; demonstrate substantial loss, show the application was filed without unreasonable delay, and provide security for the due performance of the decree.
18. The concept of “substantial loss” is the cornerstone of the discretion to grant a stay. It is not enough to merely state that substantial loss will occur; the applicant must specifically demonstrate the loss he stands to suffer. As was stated in *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] eKLR;
 - “No doubt, in an application for stay of execution pending appeal, the applicant must not only show that he has an arguable appeal, but also that if the stay is not granted, his appeal will be rendered nugatory, should it succeed. The applicant must show that if execution is carried out, he would suffer substantial loss, and that the execution would create a state of affairs that will irreparably affect or negate the very essence of his appeal.”
19. The Applicant has anchored his claim of substantial loss on two main pillars. First, that the subject matter, Motor Vehicle Registration No. KBV 830B, is unique and also serves as security for a loan with KIE. He has annexed a copy of the logbook showing the names of the Appellant and KIE. He contends that execution would expose him to serious financial hardship, potential default, and loss of the security, making it extremely difficult to protect his proprietary and financial interests. Secondly, the Applicant deposes that he is not aware that the 1st and 2nd Respondents have any means of refunding the decretal amount should his appeal succeed. This is a relevant consideration. If the Respondents are men of straw, the success of the appeal would be rendered nugatory as the Applicant would be unable to recover the sums paid. While the Applicant has not provided direct evidence of the Respondents’ financial status, the 2nd Respondent’s response does not offer any assurance of his or the 1st Respondent’s ability to refund the money.
20. The 2nd Respondent has argued that the Applicant has not specifically established the substantial loss he will incur. However, I find that the Applicant has, to a sufficient degree, demonstrated the potential loss he faces. The loss of the specific motor vehicle, which is the very subject of the dispute and is encumbered, coupled with the real risk of an inability to recover the decretal sum from the Respondents, constitutes substantial loss.
21. The judgment was delivered on 14th October, 2025. The Memorandum of Appeal is dated 6th November, 2025. The present application is dated 3rd December, 2025. The Applicant has explained



that the application is urgent because the plaintiff's Bill of Costs is pending taxation, after which execution can proceed.

22. I find that the application was filed promptly and without unreasonable delay. The time between the judgment and this application is relatively short and is explained by the need to prepare the appeal and this application.
23. The Applicant has explicitly stated in ground 12 of the Notice of Motion and paragraph 13 of his Supporting Affidavit that he is willing to comply with such security as the court may order for the due performance of the decree. This is a mandatory requirement, and the Applicant's unequivocal undertaking is noted.
24. While the main test for stay is substantial loss, the court is also entitled to consider whether the appeal is arguable. The Applicant has raised several grounds of appeal, among them being the absence of proof of an agency relationship. He has annexed the sale agreement dated 9th December, 2019, which is between the 2nd Respondent (as vendor) and the 1st Respondent (as purchaser). The Applicant is not a party to that agreement. This is a critical piece of evidence that lends credence to his argument that he was not involved in the transaction.
25. The 2nd Respondent's assertion in his replying affidavit that "I was the agent of the applicant in the said transaction" does not, by itself, prove the existence of an agency relationship in law. The question of whether such an agency relationship was properly pleaded and proved is a matter for the appellate court to determine.
26. Without delving into the merits of the appeal, I am satisfied that the Applicant has raised prima facie arguable grounds. An arguable appeal is not one that must necessarily succeed, but one that is not frivolous and warrants the court's interrogation. I therefore find that the Applicant has satisfied the conditions for the grant of a stay of execution pending appeal.
27. Consequently, The Application dated 3rd December, 2015 found to be meritorious and is allowed giving rise to issuance of the following Orders:-
 - (a) A stay of execution is hereby granted pending the hearing and determination of the appeal herein on condition that the Applicant deposit the entire decretal sum of Kshs. 1,176,000/- (One Million, One Hundred and Seventy-Six Thousand Shillings) and Kshs. 420,000/- (Four Hundred and Twenty Thousand Shillings) being the loss of profit, totaling Kshs. 1,596,000/- (One Million, Five Hundred and Ninety-Six Thousand Shillings) in court within forty-five (45) days from the date hereof. In default, the stay orders shall automatically lapse.
 - (e) That Costs of this application shall abide by 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

Jausiku for 1st Respondent

Miss Cherotich for the 2nd Respondent



No Appearance for Applicant

