

2023

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL COURTS**

**HCCOMM CIVIL CASE NO. E596 OF 2023**

**MAURICE ONYANGO ODERO.....**

**.....PLAINTIFF**

**VERSUS**

**MUGOIRI HOUSE LIMITED.....**

**.....DEFENDANT**

**RULING**

1. This is a Ruling in reference of the Defendant's application by way of Notice of Motion dated 16.10.2025. It seeks the following orders:
  1. *Spent.*
  2. *Spent.*
  3. *Spent.*
  4. *THAT pending the hearing and final determination of the Appeal to the Court of Appeal this Honourable Court be pleased to issue an order for stay of execution of the judgment herein delivered on 18<sup>th</sup> September 2025.*

2023

5. *THAT the Applicant be at liberty to apply for further orders and/or directions as this Honourable Court may deem fit and just to grant.*

6. *THAT the costs of this application be in the course.*

### **Background facts**

2. This Court delivered a judgement on 18.9.2025. It was in favour of the Plaintiff against the Defendant for a sum of Ksh.25,520.000/=. Interest was awarded from the date of filing suit together with the cost of the suit.
3. To avoid the execution of Decree that was issued, the Defendant/Judgment Debtor seeks for a stay of execution pending an Appeal to the Court of Appeal.
4. The Appellant's application is opposed by way of Grounds of Opposition filed by the Plaintiff/Respondent.

### **Issues for Determination**

5. Having considered the application, the Grounds of Opposition and the submissions filed by the parties, the Court frames a single issue for determination.

(a) *Whether the Applicant is entitled to a stay of execution and if so, at what terms.*

### **Analysis**

6. The operative provision of the law is **Order 42 Rule 6 of the Civil Procedure Rules** which states as follows;

#### **Order 42 Rule 6**

**(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.**

7. When it comes to the considerations to be applied by the Court in applications of such a nature, the Court refers to the case of **Butt v Rent Restriction Tribunal [1979] KECA 22 (KLR)** where it was stated as follows;

*“It is in the discretion of the court to grant or refuse a stay but what has to be judged in every case is whether there are or not particular circumstances in the case to make an order staying execution. It has been said that the court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal, if successful from being nugatory, per Brett, LJ in Wilson v Church (No 2) 12 Ch D (1879) 454 at p 459. In the same case, Cotton LJ said at p 458:*

2023

*"I will state my opinion that when a party is appealing, exercising his undoubted right of appeal, this court ought to see that the appeal, if successful, is not nugatory."*

8. Going straight to the point, the Court notes that an appeal has been filed before the Court of Appeal. This is evidenced by the filing of Notice of Appeal.
9. The court is also persuaded that there was an undue or unreasonable delay in filing this application.
10. What remains to be considered is whether the Appellant stands to suffer substantial loss and if so, whether a stay of execution should be granted and if so, at what terms.
11. The Court notes that this is a money decree. The Plaintiff is entitled to enjoy the fruits of the judgment delivered by this Court. At the same time, the Defendant has a right to ventilate its appeal before a Higher Court. This Court has to balance the conflicting interests of the two parties. The Court refers to the case of **Arun C Sharma v Ashana Raikundalia t/a A Raikundalia & Co Advocates & 2 others [2014] KEHC 2430 (KLR)**. Gikonyo J. stated as follows;

*"The Applicants are proposing to deposit land known as Nguirubi/Nduini/333 "B", which belongs to and is in the name of Anne Waithera Haruni as security in lieu of deposit of the decretal sum. I presume since the Applicants are saying they have*

2023

*filed an appeal, the security they are proposing is pursuant to Order 42 rule 6 of the Civil Procedure Rules. The purpose of the security needed under Order 42 is to guarantee the due performance of such decree or order as may ultimately be binding on the Applicant. It is not to punish the judgment-debtor."*

12. The Applicant has offered to deposit the sum of Kshs.10,000.000/= as a security, as a consideration for the grant of the orders of stay of execution sought.
13. The Plaintiff opposes this stay stating that the sum of Ksh. 10,000,000/= is a third of the decree. The Court notes that the certificate of costs has already issued in this matter.
14. The Court is persuaded to grant a stay of execution. However, this is on condition that the Defendant/Applicant deposits a sum of Ksh. 25,520,000/= in an interest earning account in joint names of Counsel for parties within 45 days. If they can't agree on how, when and where to deposit the funds, the amount be deposited in Court within 50 days from the date of the Ruling. In default execution to issue.
15. As to costs, the same are issued at the discretion of the Court. There will be no orders as to costs.

### **Determination**

2023

16. The Defendant/Applicant's application by way of a Notice of Motion dated 16.10.2025 is allowed in the following terms:

a) *THAT pending the hearing and final determination of the Appeal to the Court of Appeal, this Court HEREBY issues an order of stay of execution of the judgement dated 18<sup>th</sup> September 2025.*

b) *THAT this is on condition that the Defendant/Judgment Debtor deposits by way of security a sum of Kshs. 25,520,000/= in an interest earning bank account to be held in the joint names of Counsel for the parties within the next 45 days from the date hereof. In the event the parties are unable to agree on the modalities of opening this joint account, the sum of Kshs. 25,520,000/= to be deposited in Court within the next 50 days from the date of this Ruling.*

c) *In default of compliance with the timeline set out above, the order of stay of execution shall lapse and execution of the Decree may proceed.*

d) *There be no order as to costs.*

17. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS  
12<sup>TH</sup> DAY OF MARCH, 2026.**

**NJOROGE BENJAMIN K.**

**JUDGE**

**2023**

In the presence of:

Mr. Seda for the Defendant/Applicant.

Mr. Kabaruru for the Plaintiff/Respondent.

Peter Wabwire - Court Assistant.