



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAKURU**

**CIVIL MISCELLANEOUS E387 OF 2025**

**JOHN WAITHAKA THUO .....**  
**APPLICANT**

**VERSUS**

**PHOEBE MOMANYI OYONDI .....**  
**RESPONDENT**

**RULING**

1. By Notice of Motion dated 18<sup>th</sup> December 2025 the Applicant prays as follows;

- 1. Spent.**
- 2. Spent.**
- 3. This Honourable Court be pleased to grant the Applicants leave to appeal out of time in respect to the judgement/decree delivered in NAKURU CMCC NO. 1282 of 2019 by Hon. Vincent Adet Okello (Senior Principal Magistrate).**

**4. Spent.**

**5. This Honourable Court be pleased to grant an order of stay of execution of the judgement and/or the decree delivered on or about 03/11/2025 and all consequential orders arising therefrom pending the hearing and determination of the intended Appeal herein.**

**6. This Honourable Court be pleased to issue an Order allowing the applicants to deposit half the decretal sum in a Joint Interest Earning Account in the names of counsels for both parties and the other half to be deposited in court as security pending hearing and determination of the intended Appeal herein.**

**7. This Honourable Court be pleased to issue any other Order as it may deem just, appropriate and expedient in the interest of justice.**

**8. Costs of this application be provided for.**

**2.** The Application is supported by affidavit evidence of the Applicant. The Applicant *inter alia* seeks leave to appeal and stay of execution of the impugned judgement of the lower court fearing that she would otherwise suffer substantial loss.

**3.** The Application seems unopposed, there being no reply thereto from the Respondent.

4. The record shows that on 23/12/2025 the court granted temporary stay of execution of the lower court's decree on condition that the entire decretal sum was deposited into court by 5<sup>th</sup> January 2026. In default of compliance with the order, the stay order would automatically stand waived.
5. It would appear that the order was not complied with as the Applicant is now making a different proposal on deposit of security for costs.
6. As the Applicant does not come to court with clean hands having not complied with the court's directive, prayer 6 of the Application is rejected. Leave to appeal as per prayer 3 is, however, granted.
7. No order is made as to the costs of the Application.
8. Ruling accordingly.

**J. M NANG'EA, JUDGE.**

**Ruling dated, signed and delivered virtually this 11<sup>th</sup> day of March, 2026.**

**In the presence of:**

Ms Cherotich Advocate for Ms Nekesa Advocate for the  
Applicant

**J. M NANG'EA, JUDGE.**

ORIGINAL