

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT CHUKA**  
**CIVIL SUIT NO. E005 OF 2025**

MARK ONE EXPRESS LTD.....1<sup>ST</sup> APPLICANT

ERIC NYAGA MBAE..... 2<sup>ND</sup> APPLICANT

VERSUS

DIRECTLINE INSURANCE COMPANY  
LIMITED.....RESPONDENT

PATRICK MWENDA.....1<sup>ST</sup> INTERESTED PARTY

CATHERINE GACHERI KINOTI.....2<sup>ND</sup> INTERESTED PARTY

HUDAH WANJUGU.....3<sup>RD</sup> INTERESTED PARTY

SIMON GATOBU.....4<sup>TH</sup> INTERESTED PARTY

JAMES MWEBIA alias  
MWAMBI RINGERA.....5<sup>TH</sup> INTERESTED PARTY

WINFRED KENDI.....6<sup>TH</sup> INTERESTED PARTY

JULIUS KIMATHI.....7<sup>TH</sup> INTERESTED PARTY

JOHN KIMANTI MUTEGI..... 8<sup>TH</sup> INTERESTED PARTY

LIZA MURUGI.....9<sup>TH</sup> INTERESTED PARTY

**RULING**

1. For determination is the notice of motion dated 8<sup>th</sup>

December 2025 seeking the following orders: -

- i. Spent
- ii. That this honourable court be pleased to issue an order of stay of execution of the judgment and all consequential orders issued in
  - a. Chuka CMCC Suit No. E190 of 2022- Patrick Mwenda v Mark One Express Limited & Erick Nyaga Mbae
  - b. Chuka CMCC Suit No. E195 of 2022- Catherine Gacheri Kinoti v Mark One Express Limited & Erick Nyaga Mbae
  - c. Chuka CMCC Suit No. E196 of 2022 Hudah Wanjugu v Mark One Express Limited & Erick Nyaga Mbae
  - d. Chuka CMCC No. E197 of 2022- Simon Gatobu v Mark One Express Limited & Erick Nyaga Mbae

- e. Chuka CMCC Suit No. E198 of 2022- James Mwebia alias Mwambi Ringera v Mark One Express limited & Erick Nyaga Mbae
- f. Chuka CMCC Suit No. E199 of 2022- Winfred Kendi v Mark One Express Limited & Erick Nyaga Mbae
- g. Chuka CMCC Suit No. E200 of 2022- Julius Kimathi v Mark One Express Limited & Erick Nyaga Mbae
- h. Chuka CMCC Suit No. E221 of 2022- John Kimanti Mutegi v Mark One Express Limited & Eric Nyaga Mbae
- i. Chuka CMCC Suit No. E253 of 2022- Liza Murugi v Mark One Express Limited & Erick Nyaga Mbae

against the Applicants pending the hearing and determination of this application.

iii. That this honourable court be pleased to issue an order of stay of execution of the judgment and all consequential orders issued in

j. Chuka CMCC Suit No. E190 of 2022-  
Patrick Mwenda v Mark One Express  
Limited & Erick Nyaga Mbae

k. Chuka CMCC Suit No. E195 of 2022-  
Catherine Gacheri Kinoti v Mark One  
Express Limited & Erick Nyaga Mbae

l. Chuka CMCC Suit No. E196 of 2022 Hudah  
Wanjugu v Mark One Express Limited &  
Erick Nyaga Mbae

- m. Chuka CMCC No. E197 of 2022- Simon Gatobu v Mark One Express Limited & Erick Nyaga Mbae
- n. Chuka CMCC Suit No. E198 of 2022- James Mwebia alias Mwambi Ringera v Mark One Express limited & Erick Nyaga Mbae
- o. Chuka CMCC Suit No. E199 of 2022- Winfred Kendi v Mark One Express Limited & Erick Nyaga Mbae
- p. Chuka CMCC Suit No. E200 of 2022- Julius Kimathi v Mark One Express Limited & Erick Nyaga Mbae
- q. Chuka CMCC Suit No. E221 of 2022- John Kimanti Mutegi v Mark One Express Limited & Eric Nyaga Mbae

r. Chuka CMCC Suit No. E253 of 2022- Liza  
Murugi v Mark One Express Limited &  
Erick Nyaga Mbae

against the Applicants pending the hearing and  
determination of the suit.

iv. That this honourable court be pleased to  
issue any such further or other orders as  
may be necessary for the ends of justice  
and to prevent abuse of the court process.

v. That costs of this application be provided  
for.

2. The application is founded on the grounds set out on  
the face of the motion and on the supporting affidavit  
of Erick Nyaga Mbae on his behalf and as the  
Managing Director of the 1<sup>st</sup> Applicant.

3. He deponed that at all material times he was the  
owner of motor vehicle registration no. KCS 488M

operated by the 1<sup>st</sup> Applicant. That the 1<sup>st</sup> Applicant holds a valid insurance policy issued by the Respondent in respect of the motor vehicle insured under policy no. 03168666 which was in force and valid at all material times.

4. He stated that the policy explicitly provides coverage for material damage to the insured vehicle arising from accidents as well as third party liability claims resulting from the use of the insured vehicle which was the reason the defendant appointed counsel in all the matters.

5. He averred that the 1<sup>st</sup> Applicant paid all premiums and fully complied with all obligations under the policy including providing accurate and complete information to the Respondent. That the policy creates a binding contractual obligation on the Respondent to indemnify the 1<sup>st</sup> Applicant for any

loss or liability arising from an accident covered under the terms of the policy

6. He also averred that on 30<sup>th</sup> June 2022, the insured motor vehicle was involved in a road traffic accident that resulted to significant damage to the Applicant's vehicle and claims from third parties for loss and/or damage caused by the accident which resulted to the claims by the Interested parties in the trial court.

7. It was stated that immediately after the accident the Applicants reported the incident to the Respondent, submitted all requisite documentation including the police abstract, accident report and valuation reports and fully cooperated with the Respondent's claims assessment team. That at no point did the Applicants breach, misrepresent or fail to disclose any material facts yet the Respondent has failed, neglected and/or

refused to indemnify the Applicants or settle the third party claims arising from the accident.

8. He also stated that the Respondent defended the afore mentioned suits before the trial court where the Applicants were cited and treated as liable parties for claims that the Respondent was legally obligated to settle.

9. He further stated that execution proceedings flowing from the said judgments are imminent exposing the Applicants to attachment of assets, garnishee proceedings, proclamation of business properties, disruption of business operations and loss of reputation and goodwill in the business community. That unless stay orders are granted the Applicants stand to suffer irreparable loss that cannot be adequately compensated by monetary damages.

10. The Application came up for hearing on 12<sup>th</sup> February 2026. The Applicant's counsel informed the court that they had effected service. The court having perused the file was satisfied that the Respondent was served as evidenced by the affidavit of service on record. Despite service, the Respondent did not enter appearance nor file a response.
11. The Applicants' counsel submitted at the hearing of the application that the Respondent had satisfied the decrees in two matters and effected partial settlement in two other matters. That auctioneers have attached five motor vehicles. Further, that the Respondent had admitted liability. He urged the court to allow the application.

### **Disposition**

12. The jurisdiction of this Court to grant an order of stay of execution is anchored under **Order 42 Rule**

**6 of the Civil Procedure Rules, 2010.** The provision stipulates that no order for stay shall be made unless the court is satisfied that:-

- i. The Applicant will suffer substantial loss unless the order is made;
  - ii. The Application has been made without unreasonable delay; and
  - iii. Such security as the court orders for due performance of the decree has been given.
13. These principles have been consistently affirmed by the superior courts. In **Butt v Rent Restriction Tribunal [1982] KLR 417**, the Court of Appeal held that the power to grant stay is discretionary and ought to be exercised in such a manner as not to render an appeal nugatory.

14. The first issue for determination is whether the Applicants have demonstrated that they stand to suffer substantial loss if the orders sought are not granted. The Applicants have deponed, and it has not been controverted, that execution is imminent, that several motor vehicles have already been attached and that their business operations stand to be disrupted. It has further been demonstrated that multiple decrees arising from related claims are the subject of execution. I am satisfied that they face substantial loss.

15. Of particular significance is the Applicants' assertion that the Respondent insurer had issued a valid policy covering both material damage and third-party risks, and that the Respondent had in fact assumed conduct of the defence in the primary suits. It is also not disputed that the Respondent has

partially settled some of the decrees and fully satisfied others. In my view, these facts lend credence to the Applicants' position that liability has, at least prima facie, been acknowledged by the Respondent.

16. The second requirement is whether the application has been brought without unreasonable delay. The impugned judgments were delivered on 10<sup>th</sup> July 2025, and the present application was filed on 8th December 2025. In the absence of evidence of inordinate delay, and considering the multiplicity of suits involved, I find that the application was filed timeously.

17. The third requirement relates to the provision of security. While the Applicants have not expressly proposed security, the court retains discretion to impose appropriate terms.

18. In **Jamii Bora Bank Limited & another vs Samuel Wambugu Ndirangu (2022) eKLR**, Muchemi J stated as follows: -

***a. The power of the court to grant or refuse an application for a stay of execution is discretionary; and the discretion should be exercised in such a way as not to prevent an appeal.***

***b. Secondly, the general principle in granting or refusing a stay is, if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should the appeal court reverse the judge's discretion.***

***c. Thirdly, a judge should not refuse a stay if there are good grounds for granting it merely because, in his opinion, a better***

**remedy may become available to the applicant at the end of the proceedings.**

**d. Finally, the Court in exercising its discretion whether to grant or refuse an application for stay will consider the special circumstances and its unique requirements. The court in exercising its powers under Order XLI Rule 4(2) (b) of the Civil Procedure Rules, can order security upon application by either party or on its own motion. Failure to put security of costs as ordered will cause the order.**

20. This matter presents a unique dimension. The decrees arise from insured risks, and the Respondent insurer who is contractually obligated to indemnify has partially satisfied some decrees and participated in the defence of the primary suits. In such

circumstances, it would be unjust to subject the Applicants to immediate execution while the question of indemnity remains unresolved. The justice of the case therefore tilts in favour of preserving the substratum of the dispute.

21. I must also underscore that the purpose of stay is not to deny a successful litigant the fruits of judgment, but to ensure that the appellate or substantive process is not rendered illusory. The court must strike a balance between the competing interests.

22. In the present case, the existence of multiple related decrees, partial settlement by the Respondent, and the risk of irreparable disruption to the Applicants' business collectively justify the grant of stay pending the hearing and determination of the suit.

23. In the premises, I am satisfied that the Applicants have met the threshold under Order 42 Rule 6 of the Civil Procedure Rules.

24. Parties at liberty to apply.

**Ruling delivered, dated and signed at Chuka this 19<sup>th</sup> day of March, 2026.**

.....  
**R. LAGAT-KORIR**  
**JUDGE**

**Ruling delivered in the presence of Mr. Gikunda for the Applicant and Mr. Ndungu for the Interested Parties for the Respondents; Muluvi (Court Assistant).**