

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
CIVIL APPEAL NO. E274 OF 2025

**JOHN
MUCHOKI.....APPELLANT/APPLICANT**

VERSUS

**MARK KARIUKI MUTHONI.....
RESPONDENT**

R U L I N G

Brief facts

1. The two applications for determination dated 20th November 2025 and 19th December 2025 herein after referred to as the first and the 2nd applications. The application dated 20th November 2025 seeks for orders of stay of execution in respect of the judgment in the Small Claims Court at Ruiru SCCCOMM No. E624 of 2024 delivered on 25th November 2025 pending the hearing and determination of the appeal. The applicant further seeks for extension of time to comply with the conditional order of the ruling delivered on 3rd September 2025 requiring him to deposit the decretal sum. The application seeks to vary the security ordered by this court and to allow him to deposit 25% of the decretal sum as security pending the hearing and determination of the appeal.

2. The second application dated 19th December 2025 seeks for orders of review and setting aside of the order requiring him to deposit the entire decretal amount within 30 days and upon review, order that he deposit 50% of the decretal sum being Kshs. 153,140.50/- as sufficient security pending the hearing and determination of the appeal. In the alternative, the applicant seeks for the orders of enlargement of time for compliance with the said order and permit him to deposit the balance of the decretal sum within such further time as the court may deem just. The applicant further seeks that the orders of stay of execution granted on 20th November 2025 remain in force pending the hearing and determination of the appeal.
3. In opposition to the applications, the respondent filed a Replying Affidavit dated 6th January 2026.

Applicant's Case

4. The applicant states that judgment in the lower court was delivered on 25th November 2024 and being aggrieved with the decision, he lodged an appeal at the High Court in Kiambu being HCCA No. E007 of 2025. The applicant further states that he filed an application for stay of execution at the said court which ruling was delivered on 3rd September 2025 but he was not notified of the delivery as the ruling was uploaded on the Judiciary Case

Tracking System (CTS) on 3rd October 2025, after the lapse of 30 days. The applicant further states that he learnt of the said ruling on 10th November 2025 after he inquired the status of the matter from his

counsel. Upon becoming aware of the ruling, counsel wrote to the registry and made continuous follow ups seeking the new case number following the transfer of the file to the instant court. The said case number was issued on 17th November 2025 thereby contributing to the delay which was not inordinate.

5. The applicant states that on 14th November 2025 warrants of attachment of moveable property were issued to Icon Auctioneers and a proclamation notice dated 18th November was served upon him at his workplace indicating that the goods would be carted within seven days thus execution is imminent and if not stayed will render the appeal nugatory and occasion him irreparable prejudice.

6. The applicant avers that he has an arguable appeal with high chances of success. The applicant further states that the requirement to deposit 100% of the decretal amount is punitive in the circumstances and defeats the purpose of stay of execution whose object is to preserve the subject matter of the appeal while balancing the rights of both parties. Further, he states that he is a salaried employee with limited financial capacity and thus an order requiring him to deposit the full decretal sum is

unreasonable and disproportionate. The applicant thus states that he is willing and able to deposit 25% of the decretal amount as security.

The Respondent's Case

7. The respondent states that the ruling delivered on 3rd September 2025 granted the applicant conditional stay of execution on express terms that the applicant do deposit the entire decretal sum in court within 30 days, failure to which the application for stay would stand dismissed automatically. Thus, there was no subsisting stay order capable of being transferred, enforced, reviewed or varied and the execution process that followed was regular, lawful and sanctioned by the law.

8. The respondent argues that the applicant's assertion that he was not notified of the ruling is misconceived, misleading and legally untenable as it was his own application and the duty to follow up on its outcome squarely lay with him and his counsel. It is trite law that a litigant who files an application bears the responsibility of prosecuting it to conclusion and including monitoring the delivery of the ruling and cannot purport to shift that burden to the court, the registry or the opposing party. Additionally, the applicant admittedly did not comply with the said conditional order within 30 days or at all and by operation of the law, the application for stay stood

dismissed without the necessity of any further order of the court.

9. The respondent states that this is not the first instance in which the applicant has sought to excuse his default by alleging lack of notification, as the very basis of his earlier application seeking leave to appeal out of time was similarly anchored on the claim that he

was not notified of the delivery of the judgment of the lower court. The applicant has therefore adopted a consistent pattern of blaming alleged non notification to justify noncompliance with clear procedural timelines, a tactic that underscores indolence rather than inadvertence.

10. The respondent further states that his advocates served upon the applicant's advocates via their email address, a mention notice dated 30th September 2025 scheduling the matter for mention before the High Court at Kiambu for purposes of confirming compliance with the ruling delivered on 3rd September 2025. The said mention notice expressly brought to the applicant's attention the existence of the ruling and the need for compliance yet the applicant neither appeared nor took any steps to comply with the conditional orders of the court. That the applicant has not taken any steps to inquire about the status of the ruling between 3rd September 2025 and the alleged date of discovery in November 2025.

11. The respondent argues that the applicant's indolence, inaction and casual approach to litigation should not be visited upon him as he is entitled to enjoy the fruits of a lawful judgment and the explanation advanced regarding delayed upload of the ruling on the CTS does not excuse noncompliance.

12. The respondent argues that the applicant has not demonstrated any exceptional circumstances warranting review or variation of

the ruling delivered on 3rd September 2025 and the applicant's proposal to deposit only 25% of the decretal sum is an attempt to relitigate issues already conclusively determined by a court of competent jurisdiction.

The Applicant's Case on the application dated 19th December 2025.

13. The applicant states that on 20th November 2025, the court granted him interim stay of execution on condition that he deposits the decretal sum within 30 days which stands at Kshs. 306,281/- but he only managed to deposit 50% thereof. On 19th December 2025, his counsel wrote to the Deputy Registrar seeking issuance of an invoice and directions for deposit of the decretal sum which process occasioned unavoidable administrative delay.

14. The applicant avers that he is a salaried employee with limited means and the requirement that he deposits

100% of the decretal sum within the stipulated period has proved excessively disproportionate in the circumstances.

15. The applicant argues that there exists sufficient cause, new and compelling circumstances and good reason to warrant review of the said order within meaning of Order 45 Rule 1 of the Civil Procedure Rules.
16. Parties disposed of the application by way of written submissions.

The Applicant's Submissions

17. The applicant submits that on 23rd December 2025, this court extended time for compliance by 15 days and he deposited Kshs. 153,140/- on 7th January 2026 being half the decretal sum. The applicant argues that requiring 100% of the decretal amount would effectively stifle the appeal and render the right of appeal illusory. The respondent on the other hand suffers no prejudice as a substantial portion of the decretal amount is secured in court and the balance can be addressed upon determination of the appeal.
18. The applicant submits that the respondent filed a replying affidavit which is undated, uncommissioned and non executed and such a document is not an affidavit in law, thus his affidavits stand unchallenged on record.

The Respondent's Submissions

19. The respondent relies on the case of **Muoki vs Nyamai (Civil Appeal E233 of 2024) [2025] KEHC 7974 (KLR) (5 June 2025) (Ruling)** and submits that due to the applicant's non compliance there was no existing terms to be varied. Further, the relying on the case of **Muchanga Investments Ltd vs Safaris Unlimited (Africa) Ltd & 2 Others [2009] eKLR**, the respondent argues that the present application is an abuse of the court process. The applicant seeks to reopen issues conclusively determined by the High Court at Kiambu through a clear, conditional and self-executing order.

Once the condition attached to a stay of execution was not met, the order lapsed automatically and ceased to exist in law.

20. The respondent relies on the cases of **Githau vs Kagiri & Another (Civil Appeal 314 of 2023) [2024] KEHC 6320 (KLR) (6 June 2024)** and **Githau vs Kagiri & Another (Civil Appeal 314 of 2023) [2024] KEHC 6320 (KLR) (6 June 2024)** and submits that execution is a lawful process and shall not be considered substantial loss in the event it is carried out in the pendency of an appeal.
21. The respondent argues that the present application seeks to revive the lapsed stay, proposing partial compliance and claiming unawareness of the ruling. The said

explanations are without merit as litigants bear the responsibility of monitoring their own applications and ensuring compliance with court orders. To support his contentions, the respondent relies on the cases of **Githu Muigai vs Attorney General [2010] eKLR** and **Nicholas Kiptoo arap Korir Salat vs IEBC & 7 Others [2014] eKLR** and submits that relief cannot be granted to a party whose inaction caused the lapse of rights or orders.

The Law

Whether the applications have merit

22. The applicant filed an application dated 17th January 2025 for stay of execution of the judgment and decree issued by the Small Claims Court in Ruiru in SCCCOMM E624 of 2024 delivered on 25th November 2024 and extension of time to file an appeal at the High

Court at Kiambu vide Civil Appeal No. E007 of 2025. The applicant argued that he delayed in filing his appeal on the grounds that although judgment was delivered on 25th November 2024, he did not learn of the same until he was served with warrants of attachment on 15th January 2025. He argued that he wrote severally to the lower court to inquire about the judgment. The court delivered its ruling on 3rd September 2025 allowing the application and granting leave to file an appeal out of time and directed that the applicant file and serve the record of appeal within thirty days of the ruling. The court further granted stay of execution of the judgment on condition that the

applicant deposits the full decretal sum in court as security within thirty days from the ruling and in default, the orders of stay stood vacated automatically. The court further directed that the matter be transferred to the present court for disposition of the appeal. The matter was scheduled for mention on 6th October 2025 for directions.

23. The said ruling was delivered in the presence of counsel for the respondent and the record shows that the respondent's counsel served the applicant's counsel with a mention notice vide email on 30th September 2025 to confirm compliance. The applicant did not deny this fact.

24. The applicant admitted to not complying with the orders to deposit security and approached the present court vide the present application on the premise that he was not aware of the ruling, the ruling was uploaded to the CTS late and that the transfer of the file

to the current court caused the delay. On 20th November 2025 this court issued interim orders of stay of execution pending the determination of the application and directed that the decretal amount be deposited in court within 30 days and in default, the orders be vacated. The applicant did not comply with the said orders but wrote to the Deputy Registrar on 19th December 2025 requesting for an invoice to be generated for the decretal sum and filed the present application stating that he managed to come up with half the decretal sum. Notably, that application

was filed one day before the lapse of the 30 days duration the court granted to the applicant as an extension of time. The court graciously extended the period for a further 15 days for the deposit of the whole decretal amount and in default, the orders would stand vacated. It is trite law that a court order must be taken seriously but the applicant has failed to comply with court orders three (3) times.

25. In the case of **Teachers Service Commission vs Kenya National Union Teachers & 2 Others [2013] eKLR** the court held that:-

A court order is not a mere suggestion or an opinion or a point of view. It is a directive that is issued after much thought and with circumspection. It must therefore be complied with and it is in the interest of every person that this remains the case. To see it any other way is to open the door to chaos and anarchy and this court will not be the one to open that door.

26. From the record, the applicant paid the sum of Kshs. 153,140.50/- on 7th January 2026, which is half the decretal sum. It is noted that

the applicant has not complied with the orders of the court. The conditional order of deposit was very clear that in default of compliance the stay orders automatically stood vacated after the 15 days extension. As it stands, there are no orders of stay in place. It is noted that the

applicant has exhibited misconduct by failure to comply with orders severally since this file was in Kiambu court. Having failed to comply with court orders three (3) times, the applicant does not expect to be granted any more stay orders herein for the reason that he would still disobey. This court has extended conditional stay on three occasions and gracefully extended the time within which he could deposit the decretal amount but the applicant has shown the highest level of indolence.

27. The applicant has further sought to have the order to deposit the whole decretal sum to be reviewed. He argues that there exists sufficient cause or any new and compelling circumstances and reasons to review the said order within meaning of Order 45 Rule 1 of the Civil Procedure Rules. The applicant has not demonstrated any sufficient cause or any new and compelling circumstances to justify review of the said orders. Further, from the record, there is nothing new or compelling to warrant the review of the orders on security.

28. It is my considered view that the applicant has not established grounds to warrant review of the orders on deposit of security. On the issue of stay of execution, this court only issued interim stay upon the determination of the application. It is important to note

that the orders of stay pending the appeal issues by Kiambu High

Court automatically lapsed on 3rd October 2025. The applicant has filed several applications for stay and from his past conduct he has no intention of obeying any court orders. His aim is to buy time for settling the decretal amount by taking the court back and forth.

29. I find no merit in the applications dated 20th November 2025 and 19th December 2025 and dismiss them accordingly.
30. The applicant was directed to file his Record of Appeal within 30 days on 3rd September 2025 by Kiambu Judge Hon. Chepkwony. Five (5) months down the line, the applicant has failed to comply with the said orders.
31. On the same date, the applicant, on his own application, was granted orders to file his appeal out of time which orders have not been complied with to date.
32. For the failure to file the appeal out of time and failure to file the Record of Appeal, this court dismisses this appeal due to want of compliance and want of prosecution with costs to the respondent.
33. It is hereby ordered that the amount of Ksh.153,140/= deposited by the applicant be released to the respondent's advocate as part of settlement of the decree.

34. It is hereby so ordered.

***RULING DELIVERED VIRTUALLY, DATED AND SIGNED
AT THIKA THIS 13TH DAY OF MARCH 2026.***

**F. MUCHEMI
JUDGE**