

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELCLA NO. E024 OF 2026

AGGREY

OTIATIO

OPUDO

.....**APPELLANT/APPLICANT**

=VERSUS=

TONONOKA ROLLING MILLS LIMITED1ST

RESPONDENT

HARISH MEGHJI RABADIA2ND

RESPONDENT

RULING

1. A party seeking a stay of execution has to apply without unreasonable delay, demonstrate substantial loss to be suffered and offer security for due realization of the decree should the appeal not succeed. The said requirements are clearly outlined under **Order 42, Rule 6 (2) of the Civil Procedure Rules 2010.**
2. The Applicant has sought for stay through his application dated 16th February 2026, which application is premised on the grounds on its face and the supporting affidavit sworn by the Applicant on even date. He avers that the

Learned Magistrate **Hon. M.A Otindo SPM** delivered her judgment on 9th February 2026. In the said judgment he was ordered to vacate the property Flat No. B502, Block A, Mowlem Heights, Nairobi within 30 days and further he was condemned him to pay mense profit at the rate of Ksh 25,000/- per month from December 2021 until the date of vacation. The said sum is colossal. He also avers that he was granted 30 days stay which if lapses execution may proceed and the same will lead to his immediate financial embarrassment. The 1st Respondent has no known fixed assets and he may not be able to recovery any funds should the appeal be successful. He further averred that being aggrieved by the said judgment he has filed the instant appeal.

3. The application was opposed by the 1st Respondent vide a Replying Affidavit sworn by Dharmesh Kishorcahand Savla on 6th March 2026. It was averred that the Applicant did not controvert the evidence given in respect to the counterclaim before the trial court. He was given an opportunity to be heard but opted not to make good use

of it and therefore cannot raise issues which ought to have been raised during trial.

4. It was also averred that the 1st Respondent is a leading steel manufacturer and is capable of refunding the mense profit awarded which stands at Ksh 1,275,000/- in the event that the appeal is successful. The Applicant has not offered any security for payment of mense profits awarded by the trial court and further that the said application ought to be dismissed since it does not meet the threshold for grant of the reliefs sought.
5. During the plenary hearing of the application, Learned Counsel Mr. Kwaro made oral submissions on behalf of the Applicant while Learned Counsel Ms. Nyaencha submitted on behalf of the 1st Respondent.
6. The issue calling for determination is whether the Applicant has met the threshold for grant of the order of stay of execution sought.
7. No doubt the application herein was filed timeously, the judgment of the trial court was delivered on 9th February 2026 while the application was filed on 25th February 2026.

8. In expounding further on the requirements set out under **Order 42, Rule 6(2) of the Civil Procedure Code, 2010**, this court makes reference to the case of **James Wangalwa & Another =Versus= Agnes Naliaka Cheset (2012) eKLR**, where the Court observed that a party must demonstrate substantial loss this being a loss which is real or of value and that he must establish that execution will create a state of affairs that will irreparably affect or negate the very essential case of the Applicant as a successful party.
9. In applying the foregoing principles, the Applicant argues that execution of the decree will lead to financial embarrassment and eviction of his family from the property and further that he would be required to pay a sum of Ksh 1,250,000/ as outstanding mense profits.
10. In considering security for performance of the decree, the Applicant did not offer any security save for merely stating that the property can be security for performance of the decree. However, the court in considering the aspect of security for performance of the decree may issue an order for deposit of the decretal sum

or set such figure that may be deemed to be reasonable in the circumstances. The court can also set out the timelines and manner of its compliance with a view of curing any mischief that may be geared towards frustrating any compliance as directed by the Court.

11. The upshot is that the application dated 16th February 2026 is hereby determined as follows: -

- 1) A stay of execution of the judgment of Hon. M.A Otindo (SPM) delivered on 9th February 2026 in Milimani MCELC E019/2021 is hereby granted pending the hearing and determination of the appeal filed herein on condition that the Applicant do deposit a sum of Kshs. 1,000,000/= as security for the due performance of the decree/order as may ultimately be binding on the Applicant.**
- 2) The aforementioned sum of Kshs. 1,000,000/= shall be deposited within 30 days from today in a joint interest earning account in the names of the Advocates of the Applicant and the 1st**

Respondents or deposited to court whichever is applicable.

- 3) *In default of compliance with the condition in Order 1 and 2 above, the stay of execution hereby granted shall automatically lapse and the Respondents shall be at liberty to execute the decree without further reference to this Court.***
- 4) *Costs of this application to abide the outcome of the appeal.***

It is so ordered.

Dated, Signed and Delivered Virtually this 19th day of March, 2026.

**E. K. WABWOTO
JUDGE**

In the presence of: -

N/A for the Applicant/Appellant.

Ms. Nyaencha for the 1st Respondent.

N/A for the 2nd Respondent.

Court Assistants: Mary Ngoira and David Ngoosa.