



**Trident Insurance Company Limited v Wangari (Criminal Revision
E020 of 2024) [2026] KEHC 3845 (KLR) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3845 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARSEN
CRIMINAL REVISION E020 OF 2024**

JN NJAGI, J

MARCH 19, 2026

BETWEEN

TRIDENT INSURANCE COMPANY LIMITED APPLICANT

AND

LUCAS MUGO WANGARI RESPONDENT

RULING

1. This court on the 29th January 2026 ordered the Appellant/Applicant herein to deposit with this court a bank guarantee of Kshs. 19 million as a condition for stay of execution pending the hearing and determination of the appeal herein. They did not comply with the orders of the court but instead filed an application seeking leave to substitute the bank guarantee with an insurance bond guarantee of equivalent value.
2. The application was based on the ground that the Applicant is a business entity and that compelling it to lock up Kshs.19 million through a bank guarantee will seriously disrupt its cash flow and liquidity position and render it unable to effectively conduct its day-to-day operations. That the effect of the order is to commercially cripple the Applicant. That the Insurance guarantee of equivalent value provides adequate, credible and enforceable security and fully secures the respondent against any risk of non-payment. That the same are widely accepted in commercial litigation. That in a related matter in Garsen HCCA No. E006 of 2020 the Applicant had deposited an insurance bond without occasioning undue hardship to the Respondents.
3. The application was opposed by the Respondent through his affidavit sworn on 20th February 2025 in which he avers that the proposed insurance bond does not provide real assurance that he will receive the money if the appeal fails as bonds are often difficult to enforce compared to cash. That unlike a bank guarantee which a bank must honour on demand without proof of conditions, insurance bonds may have fine-print conditions that allow the insurer to delay or avoid payment. That insurance bonds are not enough as insurance companies are closing unceremoniously and hence exposing parties.



- Additionally, that the court made an order for the Applicant to provide a bank guarantee and if they are not satisfied with the same they should file an appeal as this court is already functus officio.
4. The application was canvassed by way of oral submissions. Mr. Bwire for the Applicant argued that a bank guarantee will require the Applicant to post the money with the bank and therefore lock up the money. That this will jolt the operations of the applicant. That insurance bonds are commonly used to secure judgments. Moreso that licensing of insurance companies is a stringent affair as they have to show liquidity before they are licenced.
 5. Counsel submitted that insurance bonds are payable on order of the court and is a commitment that the money will be paid. That they are as good as any other security. Counsel argued that there will be no prejudice caused to the Respondent.
 6. Mr. Kilonzo Wambua for the Respondent on the other hand argued that the court made an order for bank guarantee and if the Applicant was not satisfied they should have field an appeal and not ask for review. That the court is functus officiao and the issue is res judica.
 7. Counsel argued that the Applicant is not liquid and that creditors are in the process of declaring it insolvent. That there are insufficient grounds for review. That sufficient grounds would have required them to show that they are liquid and therefore that depositing money in the bank is the only way of ensuring that there is commitment to pay. That in saying that depositing Kshs.19 million will cripple their business is an admission that they cannot honour the payment. That a bank guarantee is the same as money as you have to take money to the bank.
 8. Counsel submitted that the court has discretion to determine the type of security which the court has already determined. That to get money in case of insurance bond a party has to file suit but bank guarantees are paid on demand. That some insurance bonds are non-renewable and therefore they do not provide security to parties.
 9. In reply Mr. Bwire said that the issue of res judicata does not apply as the same has not been discussed before and a decision made. That they are not saying that the Applicant cannot pay but that tying up that kind of amount of money with the bank will jolt the business of the company.
 10. I have considered the grounds in support of the application, the grounds in opposition thereto and the submissions by counsels for the parties. The issue for determination is whether the application is merited.
 11. Counsel for the applicant argues that insurance bonds are as good as any other security as they are payable on order of the court. Counsel for the Respondent on the other hand argues that the same does not offer sufficient security as some have conditions attached to them and some are not renewable. That they are difficult to enforce. That bank guarantees on the hand offer sufficient security as they are payable on demand. Moreso that the Applicant is not liquid.
 12. This court has the discretion to determine the type of security to be made by a party. Order 42 Rule 6(2) provides that the applicant in an application for stay of execution must offer such security as the court orders for the due performance of the decree or order as may ultimately be binding on the Applicant. It is therefore the duty of the court to ensure that the security is sufficient for the due performance of the decree. The fact that the Applicant herein says that depositing the money in the bank may cripple its business raised doubt whether they will be in a position to pay the decree in full in the event that the appeal does not succeed. For that reason, this court has the duty to ensure that the security offered is sufficient to settle the decree in the event that the appeal does not succeed.



13. As between a bank guarantee and an insurance bond, I am persuaded from the arguments raised by the parties that a bank guarantee will offer a more secure security than an insurance bond. Accordingly, the application to substitute the security with an insurance bond is declined.
14. Consequently, the application dated 29th January 2026 is dismissed with costs to the Respondent.

DELIVERED, DATED AND SIGNED AT GARSEN THIS 19TH DAY OF MARCH 2026.

J. N. NJAGI

JUDGE

In the presence of:

Mr. Wamalwa for Applicant

Miss Nyabuto for Respondent

Court Assistant: Janette

