



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

CIVIL APPEAL NO. E010 OF 2024

JOHN CHEBII KIPKALINY.....APPELLANT/APPLICANT

VERSUS

RIFT ELECTRICALS HARDWARE AND SPARES
LIMITED.....RESPONDENT

RULING

1. The Appellant/Applicant has moved this court vide an application under certificate of urgency dated 16th October, 2025 brought under the provisions of Order 42 Rule 6, Order 51 Rule I of the Civil Procedure Rules, 2010, Sections IA, 1B and 3A of the Civil Procedure Act, seeking for the following orders:-

- a. THAT this Honourable Court be pleased to grant a stay of execution of the Judgment and Decree delivered on 3rd October 2025 by the Honourable Lady Justice Rachel C. Biomndo Ngetich in Kabarnet High Court Civil Appeal No. E010 of 2024, pending the hearing and

determination of the intended appeal to the Court of Appeal at Eldoret.

b. THAT this Honourable Court be pleased to issue interim orders of stay of execution pending the hearing and determination of this application inter parties.

c. THAT costs of this application be in the cause.

2. The application is founded on the grounds that the Applicant being dissatisfied with the judgement delivered on 3rd October 2025 has lodged a Notice of Appeal and paid the requisite filing fees.

3. The Applicant has applied for certified copies of the proceedings and judgment for purposes of filing a substantive appeal to the Court of Appeal at Eldoret.

4. The Applicant has prepared a draft Memorandum of Appeal raising arguable grounds with high chances of success and unless stay of execution is granted, the Respondent may proceed to execute the decree, rendering the intended appeal nugatory and causing the Applicant substantial loss. That the application has been brought promptly and in good faith and the Applicant is ready and willing to furnish reasonable security for the due performance of the decree.

5. The application is supported by an affidavit sworn by the appellant/applicant John Chebii Kipkaliny who reiterates that on 3rd October 2025, this Honourable Court (Hon. Lady Justice Rachel C. Biomndo Ngetich) delivered judgment in this appeal allowing the appeal, setting aside the trial court's judgment of 31st July 2024, rescinding the land sale agreement dated 5th June 2021, ordering him to refund to the Respondent Kshs. 1,500,000/= with interest, dismissing his counterclaim and awarding costs against him both at trial and on appeal.
6. The Appellant/Applicant avers that being dissatisfied with the said decision, he has lodged a Notice of Appeal dated 13th October, 2025 and that he has also applied for a certified copy of the proceedings and judgment for purposes of filing a substantive appeal. He has annexed to this application a copy of draft Memorandum of Appeal which he contends that it raises serious and arguable grounds.
7. The appellant/applicant avers that unless stay of execution is granted, the Respondent is likely to proceed with execution to his great prejudice and render his intended appeal nugatory. He avers further that he is ready and willing to abide by any reasonable condition as to security as the Court may deem fit.
8. The application is strongly opposed by the Respondent vide a replying affidavit sworn by Sunil Kumar Manubhai Patel the director of the appellant /respondent herein.

9. He avers that the application herein dated 16th October 2025 is unmerited, fatally defective and a none-starter and the same is strongly opposed.
10. He states in his affidavit that the Applicant has not met the legal threshold to warrant granting of stay orders for reasons 'Inter Alia' they have not laid any material/evidence in court to demonstrate any substantial loss that they will suffer if stay is not granted, the appellant/respondent herein being a legal entity of own location and means.
11. That further, the amount of Kshs 1,500,000/= which the respondent/Applicant herein was ordered to refund, plus cost and interests, was initially paid by the appellant/respondent, which further demonstrates that they are persons of means and capable of refunding the same in the unlikely event the appeal in the court of appeal succeeds.
12. That on the other hand, the court in its well-reasoned judgement considered the evidence on record and submissions by all parties before reaching its judgement herein and the Applicant herein did not raise any serious objections to their submissions particulars whereof are self-evident from their submissions filed.
13. That is in view of the foregoing sentiments that they are of the view that the intended appeal has no merit and hence nil

chances of success and hence the application herein is not merited.

14. They aver that should this honorable court find that the application herein is meritorious they pray that stay be allowed on condition that 50% of the Decretal sum herein be paid to the appellant/Respondent herein within 30 days and the remaining 50% of the Decretal sum be deposited in court within the same period and in default execution to ensue.

15. That these will be the most appropriate conditions to impose while allowing this application since they strike a balance between the interests of the appellant /Respondent herein not to be denied the fruits of its judgement and at the same time the interests of the Applicant herein to the effect that they should not be denied an opportunity to ventilate their intended appeal and

if need should arise, depositing money in court is the most secure, neutral and convenient way to secure interest of both parties herein and to enable this honourable court have unlimited and unhindered control over the same should need arise for it to deal with the same particulars whereof are self-evident.

16. They aver that no good reasons have been advanced as to why the appellant/Respondent herein should be denied and or

delayed from enjoying the fruits of their judgement, otherwise and this being a money decree, stay of execution is not automatic and, in this case, the Applicants have not met the legal threshold to warrant stay of execution particulars whereof are self-evident.

17. That it is in view of the totality of the foregoing reasons/grounds that they humbly opine that this application together with the intended appeal herein are not only frivolous but also misleading and do not add up.

18. The application is canvassed by way of written submissions. The applicants on their part submits that the application is seeking primarily an order of stay of execution of the judgment and decree delivered on 3rd October 2025 by the Honourable court in this matter (Civil Appeal No. E010 of 2024), pending the hearing and determination of the intended appeal to the Court of Appeal at Eldoret.

19. They argue that the Applicant's application is anchored on Order 42 Rule 6 of the Civil Procedure Rules, 2010, which provides the conditions for granting stay of execution pending appeal. That the principles therein have been consistently applied and expounded in Kenyan jurisprudence. In *Butt v Rent Restriction Tribunal* [1982] KLR 417, the Court of Appeal held that the power to grant stay is discretionary, but the applicant must demonstrate sufficient cause., including that

the appeal is arguable and that execution would render it nugatory. They also place reliance in **Pauline Yebei & Another v Estate of Kiprotich Letting** represented by **Andrew Kipkoech Kiprono [2017] eKLR**, where the Court reiterated that the jurisdiction to grant stay is original and discretionary, requiring the applicant to show an arguable appeal and that its success would be rendered nugatory without stay.

20. On unreasonable delay in bringing the application, they submit that the judgment was delivered on 3rd October 2025, and the instant application was filed on 16th October 2025, a period of merely 13 days which constitutes no unreasonable delay, especially considering the time required to obtain instructions, prepare the draft appeal documents, and apply for proceedings, in support of this, they place reliance in the case of **Hamisi Juma Mbaya v Amakecho Mbaya [2018] eKLR**.

21. On the issue of substantial Loss to the Applicant, they submit that the Applicant avers that unless stay is granted, the Respondent may proceed to execute the decree, potentially through attachment and sale of the Applicant's properties or other enforcement measures, causing irreparable harm and substantial loss that cannot be adequately compensated.

22. That Execution would render the intended appeal nugatory, as the Applicant may lose assets or face financial ruin before the appeal is determined. They rely in **Kenya Shell Limited v Benjamin Karuga Kibiru [1986] KLR 410**. They argue that in cases involving money decrees (assuming this is applicable based on the commercial nature of the dispute), the Court in **Ujagar Singh v Runda Coffee Estates Limited [1966] EA 263** held that stay may be granted where the decretal sum is substantial and there is risk of non-recovery if the appeal succeeds, shifting the evidential burden to the respondent to prove ability to refund. They also rely in the case of **Bonface Kariuki Wahome v Peter Nziki Nyamai & another [2019] eKLR**, it was held that the applicant need only allege difficulty in recovery, whereupon the burden shifts to the respondent to demonstrate financial means. The Applicant submits that the Respondent has not shown such means, warranting stay.

23. On the issue of Arguable Appeal with Chances of Success, the applicant submits that although not a strict requirement under Order 42 Rule 6, the courts have considered the arguability of the appeal as a relevant factor. That the annexed Memorandum of Appeal raises triable issues, including misapprehension of evidence and errors in law, with high prospects of success. They rely in the case of **National Industrial Credit Bank Limited v Aquinas Francis Wasike and Another, Civil Appeal No. 238 of 2005 (UR)**, the

Court of Appeal affirmed that an arguable appeal, not necessarily one bound to succeed, suffices for stay purposes.

24. The Applicant submits that he is willing and able to provide security as ordered by the Court, such as deposit of the decretal sum in a joint interest-bearing account or other suitable form as this satisfies the third condition under Order 42 Rule 6(2)(b).

25. The Applicant submits that he has demonstrated sufficient cause for the grant of stay: no delay, substantial loss, an arguable appeal, and readiness to provide security and denying the orders would occasion injustice and render the appeal an academic exercise.

26. That it is therefore their prayer that the Honourable Court be pleased to grant stay of execution of the judgment and decree dated 3rd October 2025 pending hearing and determination of the intended appeal to the Court of Appeal and make such further or other orders as the Court deems fit, with costs to the Applicant.

ANALYSIS AND DETERMINATION

27. I have carefully considered the application dated 16th October 2025, the supporting affidavit, the replying affidavit, the rival written submissions, and the authorities cited. I have also considered the applicable law.

28. The application is one for stay of execution pending an intended appeal to the Court of Appeal. The applicable legal framework is Order 42 Rule 6 of the Civil Procedure Rules, 2010. Under Order 42 Rule 6(2), an applicant must satisfy three cumulative conditions, namely:-

- a) That the application has been made without unreasonable delay;
- b) That the applicant will suffer substantial loss unless the order is made; and
- c) That such security as the court orders for the due performance of the decree has been given.

29. On the question of delay, the judgment sought to be stayed was delivered on 3rd October 2025, while the present application was filed on 16th October 2025. This period of approximately thirteen (13) days cannot, in the circumstances of this case, be described as inordinate or unreasonable. I am therefore satisfied that the application was brought timeously.

30. The second and most critical consideration is whether the Applicant has demonstrated that he stands to suffer substantial loss if stay is not granted. Substantial loss is the cornerstone of an application for stay and must be established by evidence and not by mere assertions.

31. In the present case, the decree sought to be executed is a money decree for the refund of Kshs. 1,500,000/= together with costs and interest. The Applicant contends that execution would occasion him substantial loss and render the intended appeal nugatory. The Respondent, on the other hand, argues that it is a corporate entity of means and is capable of refunding the decretal sum should the intended appeal succeed.
32. It is now settled that in money decrees, the mere fact that execution will issue does not, by itself, constitute substantial loss. However, where the decretal sum is substantial and the ability of the decree holder to refund is placed in issue, the evidential burden shifts to the respondent to demonstrate such ability. In this case, beyond stating that it is a legal entity of means, the Respondent has not placed before the Court any concrete evidence of its financial capacity to refund the decretal sum should the appeal succeed.
33. In the circumstances, and bearing in mind the amount involved and the fact that the Applicant has already expressed apprehension regarding recovery, I am persuaded that the Applicant has demonstrated the likelihood of suffering substantial loss if stay is not granted.
34. As regards security for the due performance of the decree, the Applicant has expressly indicated his willingness to abide

by any conditions as to security that the Court may impose. The Respondent has proposed that part of the decretal sum be paid out and the balance deposited in Court. The furnishing of security is not intended to punish the judgment debtor, but to strike a balance between the competing interests of the parties on the one hand, the right of the successful litigant to enjoy the fruits of judgment, and on the other, the right of the unsuccessful party to pursue an appeal without undue hardship.

35. In my view, the interests of justice in this matter will be adequately safeguarded by an order directing the deposit of security in Court or in a joint interest-earning account, pending the determination of the intended appeal.

36. Although the arguability of an appeal is not a statutory requirement under Order 42 Rule 6, I note that the Applicant has exhibited a draft Memorandum of Appeal raising issues that cannot be said, at this stage, to be frivolous. This factor, while not decisive, reinforces the need to preserve the subject matter of the appeal.

37. From the foregoing, I am satisfied that the Application dated 16th October 2025 has met the threshold for the grant of an order of stay of execution pending hearing and determination appeal on conditions set out hereunder

38. **FINAL ORDERS:-**

- a) Judgment and decree delivered on 3rd October 2025 is hereby stayed pending herein and determination of appeal on condition that a sum of **Kshs. 1,500,000/=** is deposited in an interest earning account in the joint names of the advocates for the parties herein.
- b) **Compliance with order (a) above within (30) days** from the date hereof, failing which the stay orders shall automatically lapse.
- c) Costs of the application shall abide by the outcome of the appeal.

Dated and signed at **Nairobi** this 11th day of March 2026.



.....
R NGETICH
JUDGE

Dated, Countersigned and delivered at **Eldoret** this 12th day of March 2026.

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J.R. WANANDA
JUDGE

In the presence of:

Court Assistant – Brian Kimati
Kiptoo for Applicant/Appellant.