



**Kiraka v Festus (Civil Appeal E136 of 2025) [2026] KEHC 3898 (KLR) (12 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3898 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CIVIL APPEAL E136 OF 2025  
EM MURIITHI, J  
MARCH 12, 2026**

**BETWEEN**

**HESBORN KIRAKA ..... APPELLANT**

**AND**

**ERICK KIRAKA FESTUS ..... RESPONDENT**

**RULING**

1. The applicant filed a Notice of Motion on 8<sup>th</sup> December, 2025 seeking the following orders:
  1. Spent.
  2. Spent.
  3. That the Honourable Court be pleased to stay of execution of the judgment issued by the Principal magistrate court Hon. Monica Munyendo on 7/11/2025 pending the hearing and determination of this appeal.
  4. That the costs of this application be provided for.
2. The application is based on the grounds on the face of the application and the supporting affidavit of the applicant setting the applicant's case is that the Honourable Court made its judgment on 7<sup>th</sup> November, 2025. He was aggrieved by the judgment of the Honourable Court in Civil Case NO.56/2020 and decided to appeal. The applicant aver that he applied for certified copies of ruling and proceedings which he still haven't received yet to enable him do a record of appeal. Pending the appeal, he wishes that the lower court orders be stayed to prevent his appeal being rendered nugatory if not stayed. Lastly, the applicant filed his application without unreasonable delay.
3. The Respondent deposed to a Replying Affidavit and avers that Judgment in Gichugu Civil Suit Number 56 of 2020 was delivered on 7<sup>th</sup> November, 2025 in his favour for payment of Kshs. 500,100/= plus costs of the suit. On 18<sup>th</sup> November, 2025 his advocate served the Respondent with the Notice



of Assessment of costs and it was after services that the Appellant/Applicant filed the Memorandum of Appeal.

4. The respondent avers that the Appellant/Applicant has not demonstrated that he will suffer substantial loss if stay is not granted. The Appellant/Applicant has not offered adequate or any security for the due performance of the Decree. Lastly, the appellant has failed to demonstrate whether they have an arguable appeal

### **Applicant submissions**

5. The judgment was entered on 7/11/2025 upon which the appellant lodged an appeal and later filed this application on 8<sup>th</sup> December, 2025. He submits that the appellant filed the application within one month of the delivery of the judgment by the lower court therefore the same was done without undue delay.
6. The appellant submits that if this application is not allowed, then the Respondent may proceed to execute the decree in fulfilment of the judgment of the lower court, therefore rendering the appeal nugatory and the applicant shall suffer substantial loss. The appellant is ready to provide security of kshs 50,000.

### **Respondent submissions**

7. It is the Respondent's submissions that on the issue of substantial loss, the Applicant has not demonstrated how he will suffer if stay is not granted. The Applicant has failed to demonstrate whether they have an arguable Appeal before this Honourable Court. Further, the Respondent submits that the Applicant has not offered adequate security for the due performance of the Decree. He submits that the Applicant only intends to delay the execution of the Judgment by filing the Appeal and the Application before this Honourable Court.

### **Issue**

8. Whether the applicant should be granted stay pending hearing and determination of appeal.

### **Analysis**

9. The principles governing stay of execution pending appeal are provided under Order 42 Rule 6(2) of the Civil Procedure Rules which provides that:
  - a. The court must be satisfied that substantial loss may result to the applicant unless the order is made;
  - b. The application must be made without unreasonable delay; and
  - c. The applicant must provide security for the due performance of the decree.

### **Whether the application was filed without unreasonable delay**

10. The impugned judgment was delivered on 7<sup>th</sup> November, 2025 while the present application was filed on 8<sup>th</sup> December 2025. In the circumstances of this case, a delay of approximately one month cannot be said to be unreasonable.



### **Whether the Applicant has demonstrated substantial loss**

11. The Applicant contends that unless stay is granted the Respondent may proceed with execution which would render the appeal nugatory.
12. The Court of Appeal in *Kenya Shell Ltd v Benjamin Karuga Kibiru* [1986] KLR 410 held that execution of a lawful decree alone does not constitute substantial loss unless the applicant demonstrates other factors such as inability to recover the decretal sum if the appeal succeeds.
13. In the present case, the decretal sum is Kshs. 500,100/=. The Applicant has not placed material before this court demonstrating that the Respondent would be unable to refund the decretal sum if the appeal succeeds.

### **Security for due performance**

14. Order 42 Rule 6(2)(b) requires the applicant to provide security for the due performance of the decree. The Applicant has expressed willingness to deposit Kshs. 50,000 as security. However, considering that the decretal sum is Kshs. 500,100/=:, the court must ensure that adequate security is provided.
15. In *Halai & Another v Thornton & Turpin (1963) Ltd* [1990] KLR 365, the Court of Appeal held that the court must order security as a condition for stay to ensure the decree holder is protected.
16. In the circumstances, this court finds that justice will be served by granting stay on condition that the Applicant deposits a reasonable portion of the decretal amount as security.

### **Orders**

17. Accordingly, for the reasons set out above, the Courts grant an order for stay of execution on condition that the applicant deposits half the decretal sum in a joint account in the names of the Counsel for the parties within fourteen (14) days.
18. In default execution to issue.
19. Costs in the appeal.  
Order accordingly.

**DATED AND DELIVERED THIS 12<sup>TH</sup> DAY OF MARCH 2026.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Mr. Kipruto for Ms. Kimotho for the Appellant.

Ms Otieno for Mrs. Makworo for the Respondent.

