

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MILIMANI**  
**JUDICIAL REVIEW DIVISION**  
**JR. NO E048 OF 2025**

**NYATI SACCO SOCIETY LIMITED.....EXPARTE  
APPLICANT**

**VERSUS**

**THE SACCO SOCIETIES REGULATORY AUTHORITY.....**

**..... RESPONDENT**

**KENYA UNION OF SAVINGS & CREDITCO-OPERATIVES  
LIMITED ..... INTERESTEDPARTY/RESPONDENT**

**RULING**

- 1.** This court delivered a Judgment on 3rd November 2025 that an Order of Certiorari is hereby issued bringing into this Court quashing the Respondent's Guideline Ref. No. SASRA/700/721/VOL.1 (67) issued on 14<sup>th</sup> January, 2025, directed to Regulated Sacco Societies.
- 2.** Being dissatisfied with the judgment the Applicant lodged a Notice of appeal.
- 3.** The Applicant subsequently filed the Application dated 25<sup>th</sup> November 2025 that forms the subject of this ruling wherein it seeks orders: -
  - 1) That the Judgment of this Honourable Court delivered on 3<sup>rd</sup> November 2025 and execution of the consequential decree be

stayed pending the hearing and determination of an appeal lodged by the Respondent / Appeal.

2) That costs of this Application be provided for.

**The Applicants Case:**

4. It is the Applicant's case that the said Judgment that was delivered on 3<sup>rd</sup> November 2025 is a fetter to the implementation of the provisions of Section 33 (b) as read with Section 40 of the Sacco Societies Act in that it calls for a Regulator such as the Applicant to undertake Public Participation for what is otherwise an advisory function which may be called for at short notice in the ordinary course of business.
5. It is further the Applicant's case that the Letter and Spirit of Section 33 (b) of the Sacco Societies Act is the establishment of an Asset Review System designed to identify risks and make a provision for the same.
6. It is also the Applicant's case that the Letter and Spirit of Section 40 of the Sacco Societies Act is the form of accounts and records which registered Sacco Societies are required to keep, notably accounts which show a true and fair state of affairs and accounts which explain all transactions and financial position to enable the Authority determine whether the Sacco society has complied with the Sacco Societies Act and the regulations made thereunder.
7. It argues that ancillary to the foregoing is the mandatory compliance with International Financial Reporting Standards and such other requirements which the Authority may prescribe.

- 8.** It argues that currently the relevant International Financial Reporting Standard which applies to the preparation of books of accounts of registered Saccos is IFRS-9, which the Authority requires and expects Saccos to comply with as and when preparing accounts.
- 9.** It is its case that in the event that the Judgment of this Honourable Court is not stayed any registered Sacco Society in Kenya will be at liberty to prepare accounts which are not reflective of the true and fair state of affairs obtaining in its operations, exposing members deposits and savings held in SACCO Societies to the risk of loss.
- 10.** It is its case that with the losses to accrue, then the Authority will have effectively failed to discharge its statutory mandate of regulating and supervising registered SACCOs which would not be in Public interest.
- 11.** It is its case that SACCOS as presently constituted hold deposits and savings in the order of Ksh 1, 000, 000, 000 [ One Trillion Kenya Shillings] and represent diverse segments of Kenyan Society making it imperative that they be sustained as going concerns throughout.
- 12.** This Application has been lodged timeously and without any undue delay.
- 13.** The Public stands to incur substantive losses in the event that an order of stay is not granted. The Applicant argues that it is ready, willing and able to abide by any conditions which this Honourable Court may grant for the issue of an order of stay.

- 14.** The Applicant filed a supplementary Affidavit wherein it advances the arguments that Rule 2 of the Court of Appeal Rules of 2022 defines an "appeal" to include an intended appeal.
- 15.** It argues that The Applicant filed a Notice of Appeal dated 6<sup>th</sup> November 2025 on 11<sup>th</sup> November 2025 against the decision of this Honourable Court rendered on 3<sup>rd</sup> November 2025 (Chigiti (SC), J.). The Notice of Appeal was served upon the Respondent and the Interested Party herein on 13<sup>th</sup> November 2025.
- 16.** It is its case that to date the Notice of Appeal in question remains live and valid as no Application or motion has been moved by a party or the Court of Appeal for its striking out.
- 17.** It argues that this accords with the provisions of Order 42 Rule 6(4) of the Civil Procedure Rules and confirms the existence of a duly filed appeal.
- 18.** The conditions for the grant of stay by the High Court (whose decision is the subject of the upcoming appeal); are distinct from those which obtain at the Court of Appeal.
- 19.** Order 42 Rule 6 (1) & (2) is the operative rule of procedure which lays down the conditions for the grant of stay before the High Court; while Rule 5 (2) (b) of the Court of Appeal Rules of 2022 is the operative rule which lays down conditions for the grant of a stay before the Court of Appeal.
- 20.** The distinctions between the foregoing provisions of procedure are brought about by the fact that the Court of Appeal doesn't use the

Civil Procedure Rules; instead it uses its own self-executing rules which currently exist in the form of the Court of Appeal Rules of 2022.

- 21.** It is its case that the grant of a stay by the High Court is not pegged on the existence of an appeal before the Court of [Appeal.It](#) submits that in the ordinary course of business, a trial court is ill-suited to assess the merits or otherwise of an intended appeal as it amounts to sitting on appeal against its own decision.
- 22.** The Respondent has not annexed any scintilla of evidence to prove or show that the Applicant has shielded or is shielding the Interested Party from fulfilling its obligations towards duly registered Saccos who invested in KUSCCO (the Interested Party).
- 23.** The Applicant's Application is informed by facts contrary to the Respondent's assertion that it is based on speculation.

### **The Applicant's Submissions;**

- 24.** At the heart of the Applicant's complaint in the Application in question was the decision of this Honourable Court to quash SASRA GUIDELINE REF. NO SASRA / 700 / 721 / VOL.I (67) dated 14<sup>th</sup> January 2025.
- 25.** The same was issued to all registered Deposit- Taking Saccos (DT's) regulated by the Applicant pursuant to the provisions of Section 33 (b) as read with Section 40 (3) of the Sacco Societies Act (hereinafter 'the SSA').

- 26.** The tenor of the said Guideline was to direct all Deposit-Taking Saccos regulated by the Applicant which had made investments with the Kenya Union of Savings & Credit Co-operatives (hereinafter 'KUSCCO' or the Interested Party) to start recognizing impairment loss and make provision for future write-offs.
- 27.** On its part, the Respondent termed the said Guideline as ultra vires, irregular, unfair and contrary to the Applicant's objects and functions, which this Honourable Court affirmed in its Judgment dated 3<sup>rd</sup> November 2025.
- 28.** The Applicant now seeks a stay of the said Judgment.
- 29.** Order 42 Rule 6 of the Civil Procedure Rules, with Rules 1 and 2 provides;

*“(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the Application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on Application being made, to consider such Application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.*

*(2) No order for stay of execution shall be made under sub rule (1) unless—(a)the court is satisfied that substantial loss may result to the Applicant unless the order is made and that the Application has been made without unreasonable delay; and(b)such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicant."*

**30.** It is the Applicant's case that the following can be discerned as the principles which govern the grant of an order of stay pending appeal:

a) That a substantial loss may result to the Applicant unless the order is made;

b) That the Application is made without unreasonable delay; and

c) That such security as the court orders for the due performance of such decree or order as may ultimately be binding upon the Applicant is provided.

**31.** It submits that the Applicant is a statutory body established pursuant to Section 4 (1) of the SSA with a Mandate set out at Section 5 of the SSA in the following terms:

*"The objects and functions of the Authority shall be to—*

*(a) license Sacco societies to carry out deposit-taking business in accordance with this Act;*

*(b) regulate and supervise Sacco societies; [Emphasis added].*

- 32.** The object set out at Section 5 (b) of the SSA speaks to the underlying facts to the present Motion. The offending Guideline was issued by the Applicant whilst wearing the hat of a Regulator which bestows upon it the power to regulate and supervise Sacco Societies: Deposit-Taking (DT) and Non-Withdrawable Deposit-Taking Saccos (NW-DT) alike.
- 33.** The acts of regulation and supervision are done for and in the name of the public, with a view to regulating an Industry whose cumulative worth is in the order of Ksh 1, 100,000,000 (Kenya Shillings One Trillion, One Hundred Million).
- 34.** The said figure is an aggregate of contributions made by members of various Saccos across the Republic of Kenya and cuts across various sectors of the Economy including but not limited to: Pensions, Banking, Transport, Public Service etc.
- 35.** In light of the foregoing, notably the character, role and place of the Sacco Industry in Kenya, Regulation and Supervision of Sacco Societies becomes an indispensable ingredient in their well-being as going concerns and by extension the performance of the Kenyan economy as a whole.
- 36.** It is against the foregoing backdrop and cognisant of the fact that Saccos had made significant investments with the Interested Party comprised of member funds which were more likely than not to be realised that the Applicant issued the Guideline in question. Simply put, all that the Applicant was requesting of Saccos in the Republic of Kenya which had invested in the Interested Party was to recognize the

fact that the character of their investments at KUSCCO had changed from one with guaranteed returns, to one where return was doubtful.

- 37.** Upon recognition of this fact in the respective books, subsequently provision was to be made to cushion affected Saccos and their Members from the unenviable reality going forward.
- 38.** Indeed, the investments held by the Interested Party fell through and the entire Nation represented by the members of Saccos who had invested monies in the Interested Party were at a loss on what to do, when it became apparent that the former Management of the Interested Party had not done a stellar job in so far as managing the monies which had been placed in their hands was concerned.
- 39.** It submits that the events at KUSCCO were public knowledge and brought with them the risk of wiping out hard-earned Savings, Pension and Capital belonging to the public.
- 40.** It submits that Regulation 55 of the Sacco Societies (Deposit-Taking Sacco Business) Regulations 2010 (hereinafter "the regulations") requires Sacco Societies within three (3) months after the end of the Financial Year to submit for approval to the Authority its audited financial statements, before publication and presentation to the Annual General Meeting.
- 41.** Regulation 55 provides;

“(1) A Sacco Society shall within three months after the end of the financial year submit for approval to the Authority its

audited financial statements, before publication and presentation to the Annual General Meeting.

(2) The audited financial statements to be submitted to the Authority pursuant to the Act shall be in three copies and shall among other things—

(a) disclose any material amount written off with a resolution of the general meeting of the Sacco Society accompanied by satisfactory explanation;

(b) have a signed statement of directors' responsibility;

(c) the auditor's opinion;

(d) statistical information;

(e) cash flow statement;

(f) statement of changes in equity; and

(g) other disclosures as prescribed in these Regulations.

(3) A Sacco Society shall display its audited accounts in accordance with section β(r) of the Act, and in addition may post such Statement of comprehensive income covering its activities and any other information prescribed, in both its website and that of the Authority.

(4) A Sacco Society shall hold its Annual General Meeting within four months after the end of the financial year.”  
[Emphasis added]

**42.** Regulation 3 of the Regulations defines "full and fair disclosure" thus:-

*“Means the level of disclosure which a prudent person would provide to a member of a Sacco, to the Authority, or, at the discretion of the board of directors, to creditors, to inform them of the financial condition and the results of operations of the Sacco.” [Emphasis added]*

**43.** In its submissions the Applicant poses the questions;

- i. What would be the quality of the audited financial statements which Deposit taking Saccos would present to: members of Saccos and the Authority (upon conclusion of the Financial Year); or Creditors as the case may be?
- ii. Would such financial statements amount to full and fair disclosure as envisaged at Regulation 3?
- iii. What would be the overall impact of presenting financial statements which do not portray a "true and fair" picture of the financial affairs of a given Sacco; or Saccos as a whole? may be?

**44.** In response it submits that going forward the quality would be doubtful since the Judgment of 3<sup>rd</sup> November 2025 has effectively qualified the Application of Section 33 (3) (b) & (c) and 40 (3) of the SSA by placing a requirement for Public Participation as a condition precedent to their Application.

- 45.** In the same breath, the judgment in question has placed accounting standards touching on the Sacco Industry in free fall by similarly qualifying the use of International Financial Reporting Standards (IFRS) in particular IFRS 9.
- 46.** It submits that the absence of a credible International Standard as a comparator doesn't engender confidence among the consumers of Financial Statements touching on the Sacco Sector.
- 47.** It submits that if the Judgement in question is not stayed, there is a real and imminent danger of among others the Financial Performance of Saccos as presented by Financial Accounts or Books of Accounts from time to time is of interest to a broad spectrum of stakeholders including but not limited to: Policy makers, Investors and the Public. So key is the said information as it enables decisions to be made from the highest to the lowest levels of society in areas as diverse as: Financial inclusion, Health and Education to name but a few. It submits that making of Accounts give a true and fair indicator of the state of any given business entity.
- 48.** It submits that if this Honourable Court declines to grant the stay being sought by the Applicant, it is more likely than not that Saccos may make erroneous economic decisions such as payment of dividends on the assumption that they are in a position to do so, thereby placing the stability of Saccos at risk.
- 49.** With stability on the line, the likelihood of loss of member funds becomes a possibility on a large scale. Saccos generate taxable income

in the ordinary course of business as they lend money to their members and engage in other ancillary activities.

- 50.** In accounting practice, the provision which the Applicant required Deposit-Taking Saccos to make on account of their investments with the Interested Party is regarded as an Expense.
- 51.** Thus, for tax purposes had Saccos applied the Guideline issued by the Applicant, their respective tax liabilities would have been less on account of reduced earnings.
- 52.** With the Guideline quashed by this Honourable Court's Judgment; and in the event that the present Application is dismissed, the tax liability of Saccos will rise.
- 53.** In the Financial Year ending 31<sup>st</sup> December 2025 the Applicant regulated 177 Deposit Taking Saccos countrywide with varying profiles in terms of membership and earnings, but which no doubt contributes to the Exchequer in one way or another.
- 54.** The Applicant submits that running parallel to the subject of questionable accounts which don't give a fair and true picture of the state of Saccos would be the subject of falsification of accounts.
- 55.** Ultimately, there is a nexus between the foregoing themes.
- 56.** It submits that if the judgment of this Honourable Court is not stayed and Saccos prepare their accounts without regard to International Financial Reporting Standards (I FRS) or Guidelines prescribed by

the Applicant; and the latter being a product of the decision to disregard the said Standards and or Guidelines.

57. This limb would be the violation of the relevant Accounting Standards, exposing offenders (Saccos acting through their Boards) to the risk of criminal prosecution.
58. The financial Statements will amount to misrepresentation of the financial affairs of a given Sacco; or Saccos as a whole posing great risk to the public with regard to the quality of financial information availed to them by Saccos on one hand; and the false reassurance of the continued existence of Saccos as going concerns.
59. The present Application was lodged without unreasonable delay, being 23 (Twenty-Three) days after the delivery of the judgment sought to be stayed.
60. The Applicant has expressed willingness to abide by any terms which this Honourable Court may impose for the grant of a stay.
61. Reliance is placed in the case of LTD [2019] KEHC 7586 (KLR) wherein it was observed thus: -

*“The Applicant must show and meet the condition of payment of security for due performance of the decree. Under this condition a party who seeks the right of appeal from money decree of the lower court for an order of stay must satisfy this condition on security. In this regard, the security for due performance of the decree under order 42 rule 6(1) of the Civil Procedure Rules, it is trite that the winner of litigation should not be denied the*

*opportunity to execute the decree in order to enjoy the fruits of his judgment in case the appeal fails.”*

**62.** In **Mwaura Karuga T/A Limit Enterprises vs. Kenya Bus Service and 4 others**[2015] eKLR, the Court rendered itself as follows: -

*“... The security must be one which shall achieve due performance of the decree which might ultimately be binding on the Applicant. The rule does not, therefore, envisage just any security. The words 'ultimately be binding' are deliberately used and are useful here, for they refer to the entire decree as will be payable at the time the appeal is lost. That is the presumption of law here. Therefore, the ultimate decree envisaged under order 42 rule 6 (2) (b) of the Civil Procedure Rules includes costs and interest on the judgment sum unless the latter two were not granted-which is seldom. The security to be given is measured on that yardstick.”*

**63.** In **Focin Motorcycle Co. Limited Vs Ann-Wambui Wangui & Another** [2018] eKLR, the Court stated thus: -

*“Where the Applicant proposes to provide security as the Applicant has done, it is a mark of good faith that the Application for stay is not just meant to deny the Respondent the fruits of judgment. My view is that it is sufficient for the Applicant to state that he is ready to provide security or to propose the kind of security but it is the discretion of the Court to determine the*

*security. The Applicant has offered to provide security and has therefore satisfied this ground for stay.” [Emphasis added]*

64. The Applicant filed supplementary submissions wherein it submits that Order 42 Rule 6(1) & (2) of the Civil Procedure Rules applies to Applications for the grant of stay at the High Court, while Rule 5 (2) (b) of the Court of appeal rules 2022 is the operative rule for determining Applications for stay before the Court of Appeal.
65. It also submits that matters before the Court of Appeal fall exclusively within its province as ordained by the Constitution, the Appellate Jurisdiction Act Cap 9 and the Court of Appeal Rules of 2022.
66. It also submits that the Respondent has deftly cherry picked its response to the definition of an "appeal" as defined at Rule 2 of the Court of Appeal Rules of 2022 to include an intended appeal. As such it submits that the issue of the Applicant's alleged non-compliance with Order 42 Rule 6 (4) of the Civil Procedure Rules falls by the wayside.

**The Respondent’s case:**

67. It is the Respondents' case that the Application is ill-advised and without any legal basis. The aforesaid Application is anchored on the premises of pending appeal, as at the time of the instant Response, there is no pending Appeal.
68. This according to the Applicant can be gleaned from the bundle of pleadings before the Court of Appeal and the Court of Appeal's Directions as notified by its Deputy Registrar to parties in respect of

the Application by the Applicant (herein) seeking to extend time to file its Record of Appeal.

- 69.** The Application herein is founded on misapprehension that the judgement of this court is a fetter to the implementation of Section 33(b) as read with Section 40 of the Sacco Societies Act (the Act) which require every Sacco Society to prescribe an asset review system for identification of risk and the adequacy of the provisions for losses account and to keep accounts and records that depict a true and fair state of affairs.
- 70.** The Respondent's actions vide the quashed illegal Guideline cannot be construed to be in line with the intent of the aforesaid provisions of the Act in a situation where the Sacco Societies risks losing members massive investments held at the Interested Party.
- 71.** The Applicant's action disguised as regulatory power within the meaning of the aforesaid provisions of the law only seek to shield the Interested Party from the obligations on recoverable investments of the Respondent and other affected Sacco Societies.
- 72.** The Applicant is enjoined by the law to act in the best interests of the Sacco Societies. However, the issuance of the quashed Guideline clearly manifested Applicant's abdication of its cardinal duty under the law and therefore, this honourable court should decline any invitation to stay the judgement as doing so, will have overreaching financial consequences to the Applicant and other affected Sacco Societies.

73. It is its case that the averments by the Applicant that any registered Sacco Society will be at liberty to prepare accounts which are not reflective of the true and fair state of affairs obtaining in their operations with consequences of exposing members deposits and savings to the risk of loss is not true.
74. The reasons expressed by the Applicant in its Application do not exhibit any nexus with its mandate under the Act but only constitute a deliberate attempt to shield the interested Party from its obligations in the Sacco Societies investments.
75. The Applicant's prayer as framed as a stay of judgement pending appeal lodged deprive this court jurisdiction to entertain the same as that falls within the powers of the court upon which the appeal has been lodged and in any case the Court of Appeal has to make a determination as to the extension of time to file Record of Appeal by the Applicant herein.
76. Even if the Applicant's prayer in the Application is to be construed to mean a stay pending intended appeal, the same could still fail for the reason that Applicant has not exhibited any legally valid copy of Decree, Notice of Appeal and the draft Memorandum of Appeal to enable this court evaluate whether the Applicant's intended appeal is arguable.
77. The Respondent/Applicant has not demonstrated how it will be rendered nugatory if the stay is not granted.

78. In any event, if the Appeal is to succeed, the same would not be rendered nugatory because the quashed Guideline can still be reinstated and the affected Saccos including the Respondent be compelled to write-off their financial investments withheld by the Interested Party.
79. The Application herein does not meet the mandatory requirements of Order 42 Rule 6 of the Civil Procedure namely, establishment that the Application has been made without unreasonable delay, satisfaction of substantial loss and the furnishing of security.
80. The Application herein is thus an afterthought and absolutely devoid of merit and whose aim is only to shield the Interested Party from its obligations on the Saccos investments thus the same should be dismissed with costs.

**The Respondent's submissions;**

81. A perusal of the aforesaid Application reveals that the Respondent/Applicant is attempting to reopen the substantive issues already decided in the suit herein seeking to have a second bite at the cherry, and in effect attempting to appeal those issues to this court through the back door.
82. By the judgment of this Honourable court, the Respondent/Applicant's Guideline Ref. No. SASRA/700/721/VOL.1 (67) issued on 14<sup>th</sup> January, 2025 was quashed. The import of that is that upon delivery of the aforesaid judgment, the Guideline in question ceased to exist and/or to have effect. It is no longer

consequential unless the subject judgment of this court be disturbed by the Court of Appeal.

- 83.** Granting an order for stay of the judgment would have an effect of reinstating the Guideline which this honourable court has quashed after a substantive consideration of the issues on merit, and thereby reviewing the judgment of this court.
- 84.** The quashing order by this court in effect does not require the performance of any act by the Respondent/Applicant herein capable of being stayed.
- 85.** The Respondent/Applicant is asking this honourable court to uphold a Guideline which as the court held was arrived at in an irregular, unprocedural and illegal manner.
- 86.** The Applicant only filed a Notice of Appeal and has not lodged the Memorandum of Appeal to lapse without compliance. There is no appeal emanating from this matter which has been lodged before the Court of Appeal.
- 87.** The Applicant in a mistaken adventure lodged an Application before the Court of Appeal seeking extension of time within which to file the Record of Appeal.
- 88.** That Application is pending determination by the Court of Appeal. It is its case that this court should not grant a blanket order of stay without an appeal. Stay of execution, in the absence of a substantive appeal cannot be issued.

**89.** Rule 84(1) of the Court of Appeal Rules, 2022 provides that:

*“Subject to rule 118, an appeal shall be instituted by lodging in the appropriate registry, within sixty days after the date when the notice of appeal was lodged—*

*(a) a memorandum of appeal, in four copies;*

*(b) the record of appeal, in four copies;*

*(c) the prescribed fee; and*

*(d) security for the costs of the appeal.”*

**90.** Rule 85(1) of the Court of Appeal Rules, 2022 provides that:

*“If a party who has lodged a notice of appeal fails to institute an appeal within the appointed time, that party shall be deemed to have withdrawn the notice of appeal and the Court may, on its own motion or on Application by any other party, make such order.”*

**91.** An appeal can only be said to be instituted once the Memorandum of Appeal and Record of Appeal are lodged within 60 days from the date the Notice of Appeal was lodged.

**92. Order 42 Rule 6(1) of the Civil Procedure Rules** provides that:

*“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court*

*appealed from may for sufficient cause order stay of execution of such decree...”*

- 93. Order 42 Rule 6(2) of the Civil Procedure Rules** provides *inter alia* that:

*“No order for stay of execution shall be made under subrule (1) unless—*

*(a) the court is satisfied that substantial loss may result to the Applicant unless the order is made and that the Application has been made without unreasonable delay;*

Order 42 Rule 6(4) of the Civil Procedure Rules provides *inter alia* that:

*“For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.”*

- 94.** This court is only allowed to grant stay of execution upon demonstration of sufficient cause by an Applicant. Secondly, the court must be satisfied that the Applicant shall suffer substantial loss unless the order is granted. Thirdly, the Application must be made without unreasonable delay, which must be considered from case to case.
- 95.** The Applicant has failed to establish any sufficient cause to warrant this court which quashed the impugned Guideline after a substantive determination to grant an order of stay of execution.

96. It submits that the Applicant has not laid before the court evidence that it will suffer substantial loss unless the said order of stay is granted.
97. The instant Application was filed 3 weeks after the judgment of this court was delivered. Even so, by the time the instant Application was filed, the impugned Guideline had already ceased to exist by virtue of the judgment of this court.
98. In **Gicharu v Waweru (Civil Appeal E1403 of 2024) [2025] KEHC 2565 (KLR) (Civ) (13 February 2025) (Ruling)**, this court held that:

*“9. The burden of proving substantial loss lies with the Appellant. As held in Standard Assurance Co. Ltd v Alfred Mumea Komu[2008] eKLR:*

*“Substantial loss, in its various forms, is the cornerstone of best jurisdictions for granting a stay. That is what has to be presented. Therefore, without this evidence, it is difficult to see why the Respondents should be kept out of their money.”*

*10. The Appellant has not provided any evidence to show that he stands to suffer substantial loss if execution proceeds. Mere assertions of hardship are insufficient in law. In the absence of such evidence, there is no justification for keeping the Respondent from enjoying the fruits of her judgment.”*

- 99.** The Applicant has not placed any material before this court in terms of a decree, notice of appeal and a draft Memorandum of Appeal to demonstrate the arguability of any intended appeal.
- 100.** A party seeking for stay orders must demonstrate that it has an arguable appeal by a prima facie perusal of the memorandum of appeal.
- 101.** The Applicant has deprived this court of the opportunity to assess the contemplated grounds of appeal and therefore it cannot speculate that the intended appeal is arguable.
- 102.** Reliance is placed in the case of **Gicharu v Waweru (Civil Appeal E1403 of 2024) [2025] KEHC 2565 (KLR) (Civ) (13 February 2025) (Ruling)**, the court held that:

*“4. The principles for a stay of execution pending appeal under Order 42 Rule 6(1) Civil Procedure Rules (Rules) were enunciated by the Court of Appeal in Butt v Rent Restriction Tribunal [1979] eKLR and they require the court to satisfy itself that:*

*a) The Application has been made without unreasonable delay*

*b) The Applicant has an arguable appeal with a probability of success*

*c) The Applicant shall suffer substantial loss if the stay is not granted; and*

*d) The security for due performance of the decree has been provided...*

6. *The threshold for an arguable appeal is not whether the appeal will succeed but whether it raises a bona fide issue that ought to be fully ventilated before the appellate court. Stanley Kang’ethe Kinyanjui v Tony Ketter & 5 Others [2013] eKLR held that:*

*“On arguability, an arguable appeal must not necessarily succeed, but one which ought to be argued fully before the court; one that is not frivolous. In addition, one ground of appeal can sufficiently fulfill this condition.”*

8. *Based on the above, the argument raised by the Appellant does not constitute a bona fide issue that would form the basis of a successful appeal. The Appellant has, therefore, failed to demonstrate that he has an arguable appeal.”*

**103.** In the above cited case, the court dismissed an Application for stay of execution and held thus:

*“14. In the present case, the Appellant has failed to demonstrate that he has an arguable appeal or that he stands to suffer substantial loss. These two factors weigh against the issuance of stay orders.*

*15. In the premises, I find that the Appellant has not met the threshold for an order of stay of execution pending appeal...”*

### **Analysis and determination;**

Following are the issues for determination;

1) Whether the Application has merit.

2) Who shall bear the costs.

**Whether the Application has merit.**

**104.** Through the Judgment of this Honourable Court delivered on 3<sup>rd</sup> November 2025. The application seeks to stay the execution of the decree pending the hearing and determination of an appeal lodged by the Respondent / Appeal.

**105.** Under Order 42, rule 6 (1) stipulates that no appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the court appealed from may order ...

(2) No order for stay of execution shall be made under sub rule (1) unless—

(a) the court is satisfied that substantial loss may result to the Applicant unless the order is made and that the Application has been made without unreasonable delay; and

(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicant.

(4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.

**106.** In the case of **Peter Nakupanga Lowar v Nautu Lowar [2022] eKLR**, it was held that:

*“The purpose of an order for stay of execution pending appeal is to preserve the subject matter of the appeal. If the subject is not maintained before the determination of the appeal, then it would render the appeal nugatory or an academic exercise...”*

**107.** It is upon the Applicant to demonstrate how the appeal will be rendered nugatory.

**108.** The court notes that all the Applicant has brought to the court is a Notice of appeal which on its own cannot help the court ascertain whether the failure to grant the stay order will render the appeal nugatory.

**109.** The Court of Appeal decision in **Halai & Another v Thornton & Turpin (1963) Ltd [1990] eKLR**, prescribed the criteria to be met by an Applicant seeking Orders of stay of execution by stating that:

*“Thus, the Superior Court's discretion is fettered by three conditions. Firstly, the Applicant must establish a sufficient cause; secondly, the court must be satisfied that substantial loss would ensue from a refusal to grant a stay; and thirdly the Applicant must furnish security. The Application must, of course, be made without unreasonable delay.”*

**110.** In the case of **Kenya Industrial Estate Limited & Another vs Matilda Tenge Mwachia (2021) eKLR** the Court stated thus:

*“Firstly, an Applicant has to satisfy that he/she has an arguable Appeal. However, this is not to say that it must be an Appeal that will necessarily succeed, but suffice to state, that it must be an*

*Appeal that is not frivolous or idle. Secondly, an Applicant has to demonstrate that unless an Order of stay is granted, the Appeal or intended Appeal would be rendered nugatory.”* (Emphasis is ours).

- 111.** In the instant Application although the Applicant argues that the appeal is arguable and has a high probability of success and, therefore, stay of execution should be granted to preserve the substratum of the Appeal, the Applicant has not tendered any evidence that can help the court to exercise its discretion in its favour.
- 112.** On the issue of substantial loss is, it was observed in **James Wangalwa & Another vs. Agnes Naliaka Cheseto [2012] eKLR**, that:

*“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The Applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”*

**113.** The Court of Appeal decision in **Bernard Thiga v Peter Kihiu Ng'ang'a & Another [2020] eKLR**, the Court cited with approval the decision in **Mukuma v Abuoga [1988] KLR**, where it had been held as follows:

*“Substantial loss is what has to be prevented by preserving the status quo because such loss would render it nugatory.”*  
(Emphasis is ours).

**114.** The Court of Appeal in the case of **Butt vs Rent Restriction Tribunal [1979] eKLR**, reinforced the conditions to be fulfilled for the grant of stay of execution Orders where it stated that:

- a) The power of the court to grant or refuse an Application for a stay of execution is discretionary; and the discretion should be exercised in such a way as not to prevent an appeal.
- b) Secondly, the general principle in granting or refusing a stay is, if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should the appeal court reverse the judge's discretion.
- c) Thirdly, a judge should not refuse a stay if there are good grounds for granting it merely because, in his opinion, a better remedy may become available to the Applicant at the end of the proceedings.
- d) Finally, the Court in exercising its discretion whether to grant or refuse an Application for stay will consider the special circumstances and its unique requirements. The court in

exercising its powers under Order XLI Rule 4(2) (b) of the Civil Procedure Rules, can order security upon Application by either party or on its own motion. Failure to put security of costs as ordered will cause the order for stay of execution to lapse.

- 115.** The judgment that the Applicant seeks to challenge on appeal gave an Order of Certiorari to issue bringing into this Court quashing the Respondent's Guideline Ref. No. SASRA/700/721/VOL.1 (67) issued on 14<sup>th</sup> January, 2025, directed to Regulated Sacco Societies.
- 116.** Guided by the case of **Butt vs Rent Restriction Tribunal [1979] eKLR**(Supra) where it was held that the Court in exercising its discretion whether to grant or refuse an Application for stay will consider the special circumstances and its unique requirements it is this court's finding that if an order of stay is issued, then this court will have in effect have sat on appeal against its judgment.
- 117.** A stay order if granted will simply mean that the Respondent's Guideline Ref. No. SASRA/700/721/VOL.1 (67) issued on 14<sup>th</sup> January, 2025, directed to Regulated Sacco Societies will be operationalized leaving nothing to be heard on appeal.
- 118.** On the other side, if the stay order is declined, then the court of appeal will have a judgment to set aside should the court of appeal come to the conclusion that the appeal has merit.
- 119.** The Applicants argument that if the Judgment of this Honourable Court is not stayed any registered Sacco Society in Kenya will be at liberty to prepare accounts which are not reflective of the true and fair

state of affairs obtaining in its operations, exposing members deposits and savings held in SACCO Societies to the risk of loss is speculative.

- 120.** The Applicant's argument that with the losses to accrue, then the Authority will have effectively failed to discharge its statutory mandate of regulating and supervising registered SACCOs which would not be in Public interest is also speculative.
- 121.** The Applicant's argument that the SACCOS as presently constituted hold deposits and savings in the order of Ksh 1, 000, 000, 000 [ One Trillion Kenya Shillings] and represent diverse segments of Kenyan Society making it imperative that they be sustained as going concerns throughout is without proof and this cannot form the basis of the grant of the orders sought.
- 122.** The court is of the view that the appellant does not risk nor stand to suffer substantial loss because in the event the appeal succeeds, then the Applicant will be at liberty to reissue the guideline through the applicable but legal channel that will come into effect the day the same is promulgated.
- 123.** The court notes that in any event, before the Guideline Ref. No. SASRA/700/721/VOL.1 (67) was issued on 14<sup>th</sup> January, 2025 the Respondent had allowed the sector to function without the guidelines as a result of which it is clear that the Respondent will not suffer substantial loss during the period when it will be prosecuting the appeal and I so hold.
- 124.** I decline to issue the prayers as sought.

**Costs;**

**125.** In the case of **Republic vs Rosemary Wairimu Munene, Ex-ParteA pplicant vs Ihururu Dairy Farmers Cooperative Society Ltd Judicial Review Application no 6 of 2014** where the court held as follows: -

*“The issue of costs is the discretion of the court as provided under the above section. The basic rule on attribution of costs is that costs follow the event..... It is well recognized that the principle costs follow the event is not to be used to penalize the losing party; rather it is for compensating the successful party for the trouble taken in prosecuting or defending the case.”*

**Dispensation:**

**126.** The Application lacks merit.

**Order**

The Application is dismissed with costs.

**Dated, signed and delivered at Nairobi this 24th day of March, 2026.**

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**J. CHIGITI (SC)**

**JUDGE**