



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Jetflare Limited v Ambani (Civil Appeal E250 of 2024)
[2026] KEHC 4776 (KLR) (13 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4776 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL E250 OF 2024
PN GICHOHI, J
APRIL 13, 2026**

BETWEEN

JETFLARE LIMITED APPELLANT

AND

REMIX HOPE LIKAVO AMBANI RESPONDENT

RULING

1. Before this Court is the Applicant/ Appellant's Notice of Motion dated 12th May, 2025, brought under Order 42 Rule 6 of the Civil Procedure Rules, Sections 3A and 63E of the [Civil Procedure Act](#), Cap. 21, Laws of Kenya, seeking Orders;-
 1. Spent.
 2. Pending hearing and determination of this Application, there be stay of execution of the judgment delivered by Honourable M. Kyalo - SRM on 17th October 2024 in Nakuru CMCC E243 OF 2023 (Remix Hope Likovo Ambani v Jetflare Limited), the Proclamation Notice dated 5th May 2025 and Warrants of Attachment of Movable Property in Execution of decree for money given on 30th April 2025 to M/S Crater View Auctioneers.
 3. In the alternative to prayer (2 above), if attachment shall have proceeded, there be a stay of sale and/or auction of the Applicant's moveable asset, namely motor vehicle registration number KDM 178T, and the said motor vehicle be released from the custody and storage of Crater View Auctioneers unconditionally pending hearing and determination of this application.
 4. Pending hearing and determination of the appeal filed herein, there be a stay of execution of the Judgment delivered by Honourable M. Kyalo SRM on 17th October 2024 in Nakuru CMCC E243 OF 2023 (Remix Hope Likovo Ambani v Jetflare Limited) and the Decree emanating therefrom.



5. The costs of this Application be provided for.
2. The grounds are set out on the face of the Notice of Motion. They are further supported by the Affidavit sworn on the same date by Paul Muchiri Wachera, in his capacity as the Applicant's Managing Director.
3. He states that the trial Court delivered its judgment on 17th October, 2024, ordering the Appellant to pay Kshs. 1,638,730.00 plus costs and interest, against which a timely appeal was lodged on 16th November, 2024.
4. However, that execution has commenced with warrants and a proclamation notice maturing on 12th May, 2025. He elaborates that the Respondent has attached, two (2) motor vehicles: KDM 178T, which is jointly owned by the Applicant and Sidian Bank, and KDH 680E, which does not belong to the Applicant at all.
5. He avers that the appeal is arguable and meritorious, and therefore, without a stay, it will be rendered nugatory as the Respondent is likely to execute. He states that the Applicant is ready to provide security and has filed the application without delay.
6. The Applicant is apprehensive that it will incur substantial loss since the Respondent's whereabouts and livelihood are unknown, making recovery of funds impossible if the appeal succeeds.
7. In the Supporting Affidavit, the deponent confirms the judgment details and the subsequent filing of the appeal. He highlights that execution is active and involves the illegal attachment of a vehicle (KDM 178T) still under bank financing and another (KDH 680E) that the company does not own.
8. He asserts that the appeal has high prospects of success as the trial court erred by awarding excessive general damages and medical expenses that were not pleaded. He emphasises that the company is willing to provide security but risks irreparable loss if the stay is denied, as the Respondent may be unable to refund the decretal sum.
9. Despite evidence of being duly served, the Respondent did not file any response to the Application. As per the directions of this court, the application was thus canvassed by written submissions.

Applicant's Submissions

10. The Applicant identifies the issue for determination as whether the application satisfies the criteria for a stay of execution pending appeal under Order 42 Rule 6(2) of the Civil Procedure Rules. It is submitted that the power to grant a stay is discretionary and contingent upon the Applicant demonstrating sufficient cause, proving the potential for substantial loss, providing security, and filing the application without unreasonable delay.
11. Regarding sufficient cause, the Appellant argues that the trial court's judgment was fundamentally erroneous, providing strong prospects for a successful appeal. Specifically, they challenge the award of general damages as excessive and lacking evidential justification, the award of future medical expenses that were not pleaded, and the award of loss of income despite a lack of specific proof. Citing the case of *Kiplagat Kotut v Rose Jebor Kipngok* [2015] eKLR and *Antoine Ndiaye vs. African Virtual University* [2015] eKLR, the Appellant maintains that these legal grievances constitute the necessary and sufficient cause to warrant the court's intervention.
12. On the requirement of substantial loss, the Appellant relies on the decision in *Silverstein v Chesoni* [2002] 1 KLR 867 and *Joseph Gitonga Kuria v Elizabeth Wambui Gitonga & another* [2016] eKLR,



asserting that a stay is vital to preserve the status quo and prevent the appeal from being rendered nugatory.

13. The Appellant is concerned that the Respondent's whereabouts and financial means are unknown, making the recovery of the decretal sum unlikely if the appeal succeeds.
14. It is further emphasised that the Respondent has failed to rebut these concerns or prove financial ability despite being served. Additionally, the Appellant highlights the irregular attachment of a vehicle jointly owned with a financier and another vehicle that does not belong to them at all.
15. On delay, the Appellant submits that the application was filed promptly following the threat of execution, thus avoiding any unreasonable delay.
16. Lastly, the Appellant express a readiness to comply with court-ordered terms but states that, given its existing liabilities and the nature of its assets, it proposes to depositing 25% of the decretal sum into a joint interest-earning account.
17. Consequently, the Appellant urges the court to exercise its discretion and grant the stay as sought, with costs to abide the outcome of the appeal.

Analysis and Determination

18. The Court record shows that on 28/5/2025, this Court granted a stay of execution pending hearing and determination of the application, and therefore, from the material placed before this Court, the only issue for determination is whether an order of stay of execution pending appeal should issue.
19. The principles upon which this Court may grant a stay of execution pending appeal are well-settled as enshrined in Order 42 Rule 6(2) of the Civil Procedure Rules, which provides that:

“(2)No order to 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.”

20. Accordingly, the Applicant is obliged to satisfy the Court that: -
 - i. Substantial loss may result to the applicant unless the order was made;
 - ii. The application was made without unreasonable delay; and
 - iii. Such security as the Court orders for the due performance of such decree or order as may ultimately be binding on him as been given by the applicant.
21. The above elements have been time and again reiterated by superior courts as seen in classicus case of *Butt v Rent Restriction Tribunal* [1982] KLR 417, where Madan JA (as he was then) held:-

“It is in the discretion of the court to grant or refuse a stay, but what has to be judged in every case is whether there are or not particular circumstances in the case to make an order staying execution. It has been said that the court as a general rule ought to exercise its best discretion in a way so as not to prevent the appeal, if successful, from being nugatory, per Brett, LJ in *Wilson v Church* (No 2) 12 Ch D (1879) 454 at p 459. In the same case, Cotton LJ said at p 459: “I will state my opinion that when a party is appealing, exercising his undoubted right of appeal, this court ought to see that the appeal, if successful, is not nugatory.”



22. On the issue of delay, the judgment in the lower court was delivered on 17th October 2024, and the Appeal was lodged on 16th November 2024, which was within the statutory timelines. It is demonstrated that the current application was prompted by active execution steps, specifically warrants and a proclamation notice dated 30th April 2025 and 5th May 2025, respectively. It is therefore clear that the application herein was filed promptly to arrest the imminent attachment and sale scheduled for 12th May 2025. There was no delay.
23. On substantial loss, the Respondent's residence and livelihood remain unknown. It is also noted that motor vehicle registration number KDM 178T is jointly registered in the names of the Applicant and Sidian Bank Limited and is still under finance. Its sale in satisfaction of the decretal award would inherently prejudice the interests of Sidian Bank, which is a third party and also result in irreparable financial and operational damage to the company.
24. Further, no specific ownership details were provided regarding motor vehicle KDH 680E and indeed, the Applicant denies ownership. The sale would likewise be prejudicial to whoever owns it.
25. In light of the foregoing, this Court is satisfied that the Applicant has established a case for substantial loss, thereby warranting the grant of a stay.
26. On security for the due performance of the decree, the Applicant has expressed a clear willingness to comply with court-ordered terms by proposing to deposit 25% of the decretal sum into a joint interest-earning account in the names of both parties' advocates, or directly into court, within sixty days.
27. However, given the circumstances of this case, and the fact that the Respondent herein has been non-responsive, this Court is satisfied that a deposit of security of 50% in Court is more appropriate to balance the rights of both parties herein.
28. Ultimately, this Court grants the following orders:-
 1. An Order of stay of execution of the judgment and decree delivered by Honourable M. Kyalo (SRM) on 17th October 2024 in Nakuru CMCC E243 of 2023, including a stay of the Proclamation Notice dated 5th May 2025 and Warrants of Attachment issued to M/S Crater View Auctioneers, be and is hereby issued pending the hearing and determination of the Appeal filed herein.
 2. The Motor Vehicle Registration Number KDM 178T, currently under attachment or in the custody of Crater View Auctioneers, shall be released to the Applicant forthwith.
 3. The Orders in (1) and (2) above are conditional upon the Applicant depositing 50% of the decretal sum in Court within sixty (60) days from the date of this Ruling.
 4. In default of the condition in (3) above, the stay of execution shall stand vacated, and the Respondent shall be at liberty to proceed with execution.
 5. The costs of the Application shall abide the outcome of the Appeal.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 13TH DAY OF APRIL, 2026.

PATRICIA GICHOHI

JUDGE

In the presence of:

Ms Kibore h/b for Mr Kirwa for the Applicant



N/A for the Respondent
Erickson, Court Assistant

