



**Coast Link Luxury Shuttle Company Limited t/a Guardian  
Coach & another v Kamau (Miscellaneous Civil Application  
E310 of 2025) [2026] KEHC 4955 (KLR) (15 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4955 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MISCELLANEOUS CIVIL APPLICATION E310 OF 2025**

**PN GICHOHI, J**

**APRIL 15, 2026**

**BETWEEN**

**COAST LINK LUXURY SHUTTLE COMPANY LIMITED T/A GUARDIAN  
COACH ..... 1<sup>ST</sup> APPLICANT**

**JULIUS MUKENYO ONGERE ..... 2<sup>ND</sup> APPLICANT**

**AND**

**ALBERT MWAURA KAMAU ..... RESPONDENT**

**RULING**

1. The Applicant herein moved this Court vide Notice of Motion dated 4<sup>th</sup> November, 2025 and expressed under Article 159 (2) (d) of *the Constitution*; Sections 1A, 1B, 3A, 79G and 95 of the *Civil Procedure Act*, Order 42 Rule 6 (1) (2)&(7), Order 50 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules, 2010 Seeking for Orders:-
  1. Spent.
  2. Spent
  3. This Honourable Court be pleased to grant the Applicant leave to appeal out of time in respect to the judgment/decree delivered in Nakuru SCCC E554 OF 2025-Albert Mwaura Kamau v Coast Link Luxury Shuttle Company Limited T/a Guardian Coach& Anor.
  4. Spent.
  5. This Honourable Court be pleased to grant an order of stay of execution of the judgment and/ or the decree delivered on or about 25/09/2025 and all consequential orders arising therefrom pending the hearing and determination of the intended Appeal herein.



6. This Honourable Court be pleased to issue an order that the entire decretal sum awarded by the trial court of Kshs.973,000/= plus costs and interests only be deposited in joint interest earning account in the names of both advocates as security pending hearing and determination of the intended Appeal herein.
  7. This Honourable Court be pleased to issue any other order as it may deem just, appropriate and expedient in the interest of justice.
  8. Costs of this application be provided for.
2. The Application is premised on the grounds set out on its face and is buttressed by the Supporting Affidavit of Julius Mukenyo Ongere, the 2nd Applicant, sworn on even date.
  3. The Applicant states that judgment in the trial Court suit was delivered on 25<sup>th</sup> September, 2025, in Nakuru SCCE E554 of 2025, finding the Applicants 100% liable and awarding the Respondent a total of Kshs. 973,000 in special damages and loss of user, alongside costs.
  4. He avers that at the time of the judgment, the firm of Kairu & Mc Court Advocates represented the Applicants; however, by a consent dated 4<sup>th</sup> November, 2025, KRK Advocates LLP was instructed to take over the matter.
  5. The Applicant contends that the delay in filing the appeal was inadvertent and excusable, primarily due to a delay in receiving instructions, which resulted in the statutory appeal period lapsing.
  6. He explains that his advocates informed his insurer, Directline Assurance Ltd, of the judgment, but the specific claims officer handling the file left the company before providing further instructions. Further that following further engagement, the insurer expressed dissatisfaction with the judgment and instructed an appeal, though by this time, the 30-day window for filing had already expired.
  7. He notes that the initial stay of execution has lapsed, leading the Respondent to issue warrants of attachment and proclaim his motor vehicle (KDH 272N) and household items. He added that the potential auction of his Matatu and personal property, as per the warrants dated 29<sup>th</sup> October, 2025, would cause substantial loss to his business operations.
  8. The Applicant maintains that the intended appeal has strong issue for determination and expresses apprehension that the Respondent will imminently commence detrimental execution proceedings.
  9. It is argued that the Applicant will suffer substantial loss if a stay is not granted, potentially rendering the appeal nugatory, while further asserting that the application is timely and will not prejudice the Respondent.
  10. The Applicant states that a stay is necessary in the interest of justice to allow for the exercise of the right to appeal and claims no irreparable damage will be caused to the Respondent by such an order.
  11. Due to the substantial nature of the judgment sum and the unknown financial ability of the Respondent to refund the amount if the appeal succeeds, the Applicant fears irreparable loss and a curtailed right of appeal.
  12. For security for due performance of the decree, the Applicant offers to deposit the entire decretal sum into a joint interest-earning account and concludes that the Court possesses the inherent power to grant the requested orders for the sake of fairness.



13. The Respondent opposed the Application by his replying affidavit sworn on 14<sup>th</sup> November, 2025, asserting that the Applicants have failed to provide a plausible explanation for the delay in filing their appeal to justify an extension of time.
14. He contends that the Applicants have taken no proactive steps toward the appeal process and only filed the application after being prompted by warrants of attachment.
15. The Respondent claims the Memorandum of Appeal raises no triable factual or legal issues that would justify staying the execution of the 25<sup>th</sup> September, 2025, judgment.
16. He characterises the grounds of the appeal as frivolous and lacking evidentiary support, arguing that the absence of serious legal questions tilts the balance of convenience against granting a stay.
17. The Respondent argues that the Applicants have failed to demonstrate any substantial or irreparable loss if the stay is denied, whereas he would suffer significant prejudice if it is granted. He maintains that the Applicants' offer to deposit the decretal sum as security does not automatically entitle them to a stay, as they must still meet all legal requirements under Order 42 Rule 6(2) of the Civil Procedure Rules.
18. The deponent describes himself as a capable businessman who owns multiple vehicles, including the lorry involved in the claim, asserting his ability to refund the decretal sum should the appeal succeed. He alleges the application is a bad-faith attempt to delay the enforcement of a valid judgment and urges the court not to allow an abuse of process through hopeless claims.
19. The Respondent recalls that the original case was fully defended by both parties, and there is no guarantee the Applicants will honour the judgment if their appeal eventually fails. He concludes that the application fails to meet the legal threshold for a stay of execution as established under the Civil Procedure Rules and urged this Court to dismiss it with costs.

### **Applicants Submissions**

20. The Applicants identify four key issues for determination, that is; the court's jurisdiction to grant the orders, whether the intended appeal is arguable, whether the appeal would be rendered nugatory without a stay, and if the proposed security is appropriate.
21. He argued that the application is grounded in Order 22 rule 22(1), Order 42 Rule 6, Order 50 rule 6, and Order 51 Rule 1 of the Civil Procedure Rules, 2010, and Section 3A of the *Civil Procedure Act*. The Applicants cite the case of *Halai & Another V Thornton & Turpin* (1963) LTD [1990] KLR 365 (as cited in *Elena Doudoladova Korir V KENYATTA University* [2014] KLR, which establishes that stay of execution requires sufficient cause, proof of potential substantial loss, and the furnishing of security.
22. On substantial loss, the Applicants maintain that their appeal is meritorious and that without a stay, the Respondent will levy execution, rendering the appeal nugatory and causing substantial loss. They argue the judgment sum is substantial and fear the Respondent may not be able to refund it if the appeal succeeds, especially since the Respondent has not provided evidence of his financial standing.
23. It is argued that the burden of proving the ability to refund the decretal sum shifted to the Respondent once the Applicants raised doubts about his resources. They rely on *Amal Hauliers Limited versus Abdulnasir Abukar Hassan* [2017] eKLR, where a stay was granted because the Respondent failed to disclose a source of income to refund the money.



24. On time of filling the Application, the Applicants assert that the application was filed without unreasonable delay on 4<sup>th</sup> November, 2025, immediately after the initial stay granted by the trial court had lapsed.
25. Regarding security, the Applicants express their willingness to deposit the full decretal amount into a joint interest-earning account, arguing this is reasonable security that protects the Respondent while the appeal is heard. They cite *Omwerema & another v Namunyak Nkurrenah Advocate* (Civil Appeal E002 of 2022) [2023] KEHC 22364 (KLR) to support the use of joint interest-earning accounts as valid security.
26. On whether the Appeal is arguable, the Applicants contend that their appeal filed under NAKURU HCCA E332 OF 2025: *Coast Link Luxury Shuttle Company Limited T/A Guardian Coach & Anor vs Albert Mwaura Kamau*, has high chances of success based on the grounds in the Memorandum of Appeal.
27. In conclusion, they submitted that their appeal raises substantive legal issues and that while the Respondent has a right to the fruits of judgment, the court must balance this against the Applicants' right to appeal. They conclude that staying execution upon the condition of depositing the full sum is necessary in the interest of justice to prevent the appeal from becoming an academic exercise.

### **Respondent's Submissions**

28. Regarding the first issue of whether the prayer for leave to appeal out of time is merited, the Respondent argues that the Applicants have failed to provide a cogent or plausible reason for their delay. Citing the Court of Appeal in *Muringa Company Limited v Archdiocese of Nairobi Registered Trustees* [2020] KECA 761 (KLR), the Respondent notes that the court must balance the length of delay and the reasons provided against the potential prejudice to the parties.
29. They further rely on *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] KECA 701 (KLR), which establishes that;-
 

“The law does not set out any minimum or maximum period of delay. All it states is that the delay should be satisfactorily explained. A plausible and satisfactory explanation for the delay is key that unlocks the court's flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable”.
30. The Respondent maintains that the excuse of failing to receive instructions is a sign of indolence rather than a valid legal reason, particularly since the Applicants were fully represented during the proceedings.
31. On the second issue of whether the legal requirements for a stay of execution under Order 42 Rule 6 have been met, the Respondent asserts that the Applicants have failed to demonstrate any substantial loss. Relying on various cases, including *Ujagar Singh vs Runda Coffee Estates Limited* [1966] EA 263, the Respondent emphasised that it is not standard practice to grant stays for monetary decrees unless special features exist, such as the plaintiff having no known assets to recoup from if the appeal succeeds. They also cite *Shell Ltd vs Kibiru and Another* [1966] KLR 410 and *Hamisi Juma Mbaya v Amakecho Mbaya* [2018] KLR to argue that execution is a lawful process and does not automatically constitute a loss that warrants a stay. Furthermore, the Respondent contends that the evidentiary burden is on them to show they are not a "man of straw," and they assert they are fully capable of refunding the decretal sum of Ksh 1,059,839.



32. Finally, regarding whether the Respondent will be prejudiced by a stay, they argue that they are entitled to the immediate fruits of their judgment. They rely on the decision in *Machira t/a Machira & Co Advocates vs East African Standard (No 2)* [2002] KLR 63, which cautions against total disregard for the successful party:

“To be obsessed with the protection of an appellant or intending appellant in total disregard or flitting mention of the so far successful opposite party is to flirt with one party as crocodile tears are shed for the other, contrary to sound principle for the exercise of a judicial discretion. The ordinary principle is that a successful party is entitled to the fruits of his judgment or of any decision of the court giving him success at any stage. That is trite knowledge. This is one of the fundamental procedural values which is acknowledged and normally must be put in effect by the way we handle applications for stay of further proceedings or execution, pending appeal. Of course, in the application of that ordinary principle, the court must have its sight firmly fixed on upholding the overriding objective of the rules of procedure for handling civil cases in the courts, which is to do justice in accordance with the law and to prevent abuse of the process of the court.”

33. Referencing *Anne Omolle versus Oduor Ongwen & Others* [2018] eKLR, the Respondent concludes that since the Applicants have not met all conditions under Order 42 Rule 6(2), including the proof of substantial loss, the application lacks merit and should be dismissed with costs.

### **Analysis and Determination**

34. Based on the Notice of Motion dated 4<sup>th</sup> November, 2025, the Replying Affidavit, and the subsequent Submissions, the only issues for determination by the Court are:-

1. Whether time should be enlarged for the Appeal to be filed out of time.
2. Whether a stay of execution pending intended appeal should be granted.
3. Who bears the costs of the Appeal.

35. On the issue of enlargement of time, Section 79G of the *Civil Procedure Act* provides that:

“Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order: Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

36. Further, Order 50 Rules 6 of the Civil Procedure Rules provides that:-

“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed, Provided that the costs of any application to extend such time and of any order made thereon shall be borne by the parties making such application, unless the court orders otherwise.”



37. In this case, the judgment intended for appeal was delivered on 25<sup>th</sup> September, 2025. The Applicants subsequently filed their application for leave to appeal out of time on 4<sup>th</sup> November 2025. While the Respondent asserts that the Applicants were only "awakened" by the threat of execution, the Applicants maintain that the resulting delay of approximately 10 days is not inordinate.
38. The Applicants attribute this delay to an administrative breakdown following a change of legal representation and internal staffing transitions at their insurer, Directline Assurance Ltd. In seeking the Court's favourable exercise of discretion, they rely on the principle established in *Shah v Mbogo* [1967] E.A., which posits that a party should not be deprived of their day in court due to an excusable mistake or oversight by their advocate.
39. In determining this prayer, the Court has to balance the Applicants' right to substantive justice under Article 159(2)(d) of *the Constitution* to argue its appeal against the Respondent's legitimate right to the finality of judgment.
40. While the Respondent termed the reasons provided as a sham, the Applicants contend that the delay has been satisfactorily explained and does not cross the threshold of being inordinate or an abuse of the court process. This Court is satisfied that the delay of 10 days has been explained satisfactorily and thus cannot be considered inordinate in the circumstances.
41. Regarding stay of execution, Order 42 Rule 6(2) of the Civil Procedure Rules sets out three mandatory conditions for the grant of a stay:-
- i. Substantial loss may result to the applicant unless the order is made.
  - ii. The application has been made without unreasonable delay.
  - iii. Security as the court orders for the due performance of the decree has been given.
42. The Applicant has therefore satisfied the Court regarding condition (ii) above.
43. Regarding the requirement of substantial loss, the Applicants contend that the proclamation of their motor vehicle, registration number KDH 272N, alongside various household items, portends an imminent auction that would cause irreparable harm to their business operations. They rely on the case of *James Wangalwa & Another V Agnes Naliaka Cheseto* [2012] Kehc 1094 (KLR) for the proposition that substantial loss refers to a state of affairs that would fundamentally negate the essential core of the Applicant's right of appeal, thereby rendering it nugatory. In opposition, the Respondent asserts that he is a person of means and possessed of financial liquidity to refund the decretal sum should the intended appeal succeed.
44. This Court notes the Applicants' averment that the attached motor vehicle is a 'Matatu' used for commercial purposes, and its sale would effectively paralyse their livelihood. Although the Respondent argues in support of the immediate enjoyment of the fruits of his judgment, based on his claimed solvency, the Court has to balance these competing interests.
45. This Court is satisfied that if the subject motor vehicle is disposed of at this interlocutory stage, the Applicants would be deprived of their primary source of income, which constitutes a substantial loss within the meaning of Order 42 Rule 6(2) (i) of the Civil Procedure Rules.
46. On the issue of security, the Applicants have proposed to deposit the entire decretal sum into a joint interest-earning account in the names of the advocates on record for both parties. Indeed, the primary purpose of security in a stay application is to guarantee the due performance of a court decree or order that may ultimately be binding on the applicant. That will ensure that if the Applicant loses their



appeal, the Respondent can still recover the amount or property awarded, preventing the wasting of the assets while the appeal is pending.

47. In the circumstances, this Court is satisfied that the proposed security is reasonable and sufficient to protect the interests of the decree-holder while preserving the Applicants' right of appeal. Consequently, it is allowed as a condition for the stay. Lastly, as to the issue of costs, Section 27 of the [Civil Procedure Act](#) provides that costs shall be at the discretion of the Court.
48. In conclusion, this Court makes the following Orders:-
1. The Appellant is granted leave to appeal out of time.
  2. The Appellant to file and serve the intended appeal and Record of Appeal within Sixty (60) days from the date of this Ruling.
  3. Stay of execution of the Judgment delivered on 25<sup>th</sup> September, 2025 - Nakuru SCCC E554 OF 2025-Albert Mwaura Kamau v Coast Link Luxury Shuttle Company Limited T/a Guardian Coach & Anor is hereby granted pending the hearing and determination of the Intended Appeal.
  4. The Applicant shall deposit the entire decretal sum of Kshs.973,000/= plus costs and interest in a joint interest-earning account in the names of both advocates as security within the next forty-five (45) days from the date of this Ruling.
  5. In default of (2) and (4) above, the stay of execution shall automatically lapse.
  6. Costs of the application to abide the outcome of the Appeal.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 15<sup>TH</sup> DAY OF APRIL, 2026.**

**PATRICIA GICHOHI**

**JUDGE**

In the presence of:

Ms Kagira h/b for Ms Cherotich for the Applicant

Mr. Wanjir for the Respondent

Erickson, Court Assistant

