



REPUBLIC OF KENYA



KENYA LAW
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**Kamuya v Ngina alias Eunice Nioka (Civil Appeal E242 of 2024)
[2026] KEHC 5087 (KLR) (9 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5087 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL APPEAL E242 OF 2024**

RC RUTTO, J

APRIL 9, 2026

BETWEEN

STEVE SUMBI KAMUYA APPELLANT

AND

**EUNICE NGINA NZIOKA, EUNICE NGINA ALIAS EUNICE
NIOKA RESPONDENT**

RULING

1. By the Notice of Motion application dated 10th February 2025 the Appellant/Applicant seeks the following orders: -
 - a. Spent
 - b. That this Court be pleased to stay execution of the judgment and decree dated 6th June 2024.
 - c. That costs of the application be provided for.
2. The Application is supported by the affidavit of Steve Sumbi Kamuyi the Applicant sworn on 10th February 2025. He avers that the Ruling dated 8th August dismissed his review application in total disregard to the doctrine of stare decisis and the court rendered its decision without jurisdiction. He further states that he is yet to receive typed proceedings to enable him file the Record of Appeal despite having requested for the same.
3. The applicant expresses apprehension that the Respondent may execute the decree dated 6th June 2024 at any time yet he lacks the financial capacity to refund the decretal amount should the appeal succeed.
4. He contends that it would be in the interest of justice for this court to determine the Appeal while ensuring a fair balance of rights between both parties. He argues that the Respondent has delayed the enforcement of her rights for over a year and will therefore not suffer prejudice if the application is



allowed. The applicant also indicates his willingness to abide by any directions of the court regarding provision of security.

5. The Respondent filed a replying affidavit dated 18th February 2025 opposing the application. She avers that the application is defective, an abuse of the Court process, contradictory and dead-on arrival. She contends that it is merely academic and based on falsehoods intended to mislead the court so as to deny her the fruits of her judgment.
6. The respondent further argues that the Application does not meet the threshold set out under order 42 Rule 6 of the Civil Procedure Rules. She emphasizes that the decree is a money decree and asserts that she is a woman of means thus able to refund the decretal sum should the appeal succeed.

Submissions

7. The application was heard by way of submissions. The applicant submitted that the Application meets the threshold for stay of execution under Order 42 Rule 6 of the Civil Procedure Code. He argued that he is apprehensive that the Respondent may proceed to execute the judgment and that he will suffer substantial and irreparable loss, in terms of money and property, as he will not be able to recover the decretal sum paid to the Respondent. Reliance was placed on case of Gicharu v Waweru (2025).
8. Relying further on National Industrial credit Bank ltd v Aquinas Francis Wasike & Another [2006] eKLR, the Applicant submitted that the Respondent had not discharged the burden of proving that she has sufficient resources to refund the decretal sum should appeal succeed.
9. The Applicant also submitted that the appeal is arguable, contending that the small claims court wrongly assumed jurisdiction to hear and determine a personal injury claim contrary to binding precedent and the doctrine of stare decisis.
10. The Respondent on its part submitted that the Application had not satisfied the conditions set out under Order 42 rule 6 of the Civil Procedure Rules and was therefore unmerited. It was argued that the application was an afterthought, an abuse of the court process and intended only to deny her the fruits of a legally obtained judgment.
11. Placing reliance on Misc Civil Application No. 401 of 2018 Nginyanga Kavole -Vs- Mailu Gedion the respondent submitted that there had been an inordinate delay in filing of the application and no reason had been advanced for the delay.
12. The Respondent further contended that she stands to suffer great prejudice if the application is allowed, as it will deny her enjoyment of her lawfully and legally obtained judgment. She argued that the applicant had not sufficiently demonstrated the manner in which he would suffer irreparable and substantial loss should stay be denied.
13. The Respondent relied on the case of HCA E052 0F 2021 Michael N'Itouthi Mitheu Vs Abraham Kivondo Musau to submit that the Applicant had failed to state the form of security he intends to furnish. She emphasized that the applicant had not offered any security for the performance of the decree, which is a mandatory requirement under Order 42 Rule 6.
14. Lastly, the respondent submitted that in the event the application is allowed, the applicant should be ordered to pay half of the decretal sum plus costs to the respondent's advocate, and deposit, the remaining half in a joint interest earning account in the names of the advocates on record.



Analysis and Determination

- 15. I have carefully considered the application and rival submissions. At the outset, I note that the application seeks a stay of execution of the Judgment dated 6th June 2024. However, the memorandum of appeal on record relates to the ruling dated 8th August 2024 in which the trial Court dismissed the applicant’s application for review. No appeal has been preferred against the judgment of 6th June 2024 as no memorandum of appeal has been filed to that effect.
- 16. The jurisdiction of this Court, sitting as an appellate court is invoked through a properly filed Memorandum of Appeal which must outline concisely the grounds of appeal that the aggrieved party intends to rely upon. In the instant case, the Memorandum of Appeal filed sets out grounds against the Ruling dated 8th August 2024, not against the substantive judgment of 6th June 2024.
- 17. Consequently, as no appeal has been preferred against the judgment of 6th June 2024, I find that the present application is inherently defective. This Court lacks jurisdiction to entertain an application for stay of execution of a judgment against which no appeal has been filed.
- 18. Further, in his supporting affidavit the applicant states that:
 - “ the lower court delivered judgment in the matter on 6 June 2024 for which I applied for a Review which the court dismissed vides a Ruling on 8 August 2024.”
- 19. The dismissal of a review application is a negative order. Such an order does not direct either party to perform or refrain from performing any act; it simply leaves the parties in the same position they were in before the application was filed. Such a negative order is incapable of execution. It follows that there is nothing to stay in respect of the Ruling of 8th August 2024.
- 20. In the circumstances, I find the application untenable and unmerited. It is hereby dismissed with costs to the Respondent.
- 21. For completeness of the record, I direct the applicant to file a Record of Appeal within 30 days. mention 11th June 2026 to confirm compliance.
- 22. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 9TH DAY OF APRIL, 2026.

RHODA RUTTO
JUDGE

In the presence of;
.....Appellant
.....Respondent
Selina Court Assistant

