

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

MILIMANI LAW COURTS

CIVIL APPEAL NO. E1233 OF 2024

SIMON KARANGU MBIRUA & 24 OTHERS.....

APPELLANTS/APPLICANTS

VS

COMMISSIONER FOR COOPERATIVES 1ST

RESPONDENT

MWIKI PSV SACCO LIMITED..... 2ND

RESPONDENT/INTERESTED PARTY

RULING

1. This is a ruling in respect to the Application dated 19th July 2025 wherein the Applicants seek, inter alia, orders for stay of execution of surcharge orders and any resultant attachments, pending the hearing and determination of the appeal. The Applicants also seek the unconditional release of motor vehicle registration number KCE 638P.
2. The execution stems from surcharge orders issued by the Commissioner for Co-operative Development following an inquiry into alleged mismanagement and misappropriation of Sacco funds.

3. The Appellants, being former officials/members of the Interested Party, were found culpable and ordered to refund specified sums. Their earlier appeal before the Co-operative Tribunal (Appeal No. E015 of 2022) was dismissed on 7th March 2024, affirming the validity of the surcharge orders.
4. Subsequently, in Tribunal Civil Suit No. E038 of 2021, judgment was entered on 29th August 2024 in favour of the Interested Party, paving way for execution proceedings.
5. The Applicants contend that execution has commenced through the proclamation of motor vehicle registration number KCE 638P, and that unless stay is granted, the appeal shall be rendered nugatory.
6. The 2nd Respondent/Interested Party opposed the Application through the Replying Affidavit of its current Chairman **Mr. Michael Chege** who avers that the application is procedurally untenable, frivolous, and an abuse of the court process, as the Appellants have not lodged any appeal against the judgment of 29th August 2024.
7. He states that the execution proceedings arise from valid tribunal judgments which have neither been set aside nor stayed and that under Order 42 Rule 6 of the Civil Procedure Rules, an appeal does not operate as an automatic stay of execution unless expressly granted. According to the Interested Party, no such stay has been issued in respect of the judgments of 7th March 2024 or

29th August 2024 and that the attachment of motor vehicle KCE 638P was conducted lawfully, with proper notices issued in compliance with statutory requirements.

8. The Interested Party maintained that the Appellants have failed to demonstrate any prima facie case, substantial loss, or exceptional circumstances warranting the court's intervention.
9. The Application was canvassed by way of written submissions which we have considered even though the 1st Respondent did not participate in the application.
10. Having considered the Application, the Replying Affidavit, and the submissions on record, the following issues arise for determination:

a) Whether the Applicants have satisfied the conditions for grant of stay of execution pending appeal.

b) Whether the Applicants are entitled to the release of motor vehicle registration number KCE 638P.

Analysis and Determination

11. The principles governing stay of execution pending appeal are set out under **Order 42 Rule 6(2) of the Civil Procedure Rules**, which provides 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

(b) the application has been made without unreasonable delay; and

(c) 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.”

12. The Court of Appeal in ***Butt vs. Rent Restriction Tribunal [1982] KLR 417*** it was held:

“The general principle is that a successful litigant should not be deprived of the fruits of his judgment except for good cause.”

13. Further, in ***Kenya Shell Limited vs. Kibiru & Another [1986] KLR 410***, the Court stated:

“Substantial loss in its various forms is the cornerstone of both jurisdictions for granting stay.”

14. The Applicants have argued that unless stay is granted, the appeal will be rendered nugatory due to attachment of motor vehicle KCE 638P. However, they have not demonstrated, with specificity, the nature of loss they stand to suffer, nor have they shown that such loss is irreparable.

15. In ***James Wangalwa & Another v Agnes Naliaka Cheseto [2012] eKLR***, the Court held:

“No doubt, in law, the fact that the process of execution has been put in motion... does not amount to substantial loss... 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.”

16. In the present case, the Applicants have merely stated that execution has commenced. In my considered view, the commencement of execution alone does not amount to substantial loss within the meaning of the law.
17. On whether the application has been filed without unreasonable delay, I note that the Application was filed on 19th July 2025, while execution arises from a judgment delivered on 29th August 2024. I find that the delay has not been satisfactorily explained or at all.
18. On security for the due performance of the decree, I note that the Applicants have not offered any form of security for the due performance of the decree. Additionally, it is not disputed that no stay of execution has been granted in respect of either the Tribunal judgment of 7th March 2024 or that of 29th August 2024.
19. The Court however notes that an appeal was filed on 22nd October 2024. This means that there exists a

competent appeal against the judgment giving rise to execution.

20. In ***Machira T/A Machira & Co. Advocates vs. East African Standard (No. 2) [2002] KLR 63***, the Court held:

“To be obsessed with the protection of an appellant... is to flirt with one party as crocodile tears are shed for the other... The ordinary principle is that a successful party is entitled to the fruits of his judgment.”

21. On whether the attachment and release of the motor vehicle KCE 638P is justified, I find that the Interested Party has demonstrated that the attachment was carried out pursuant to lawful execution proceedings, in compliance with the Auctioneers Act and Auctioneers Rules, 1997.

22. The Applicants have not produced evidence to rebut the assertion that proper notices were issued.

23. My finding is that in the absence of proof of illegality or procedural impropriety, the Court finds no basis to interfere with the execution process.

24. The Applicants contended that failure to grant stay will render the appeal nugatory. In ***Reliance Bank Ltd vs. Norlake Investments Ltd [2002] 1 EA 227*** stated:

“The Court must balance the interests of the appellant with those of the respondent.”

25. In the present case, the Interested Party is seeking to recover funds found to have been misappropriated, and continued delay would prejudice its members.
26. The Applicants have not demonstrated that the appeal would be rendered nugatory, particularly in light of the fact that monetary decrees are generally recoverable.
27. In a nutshell, this Court is not persuaded that the Applicants have met the threshold under Order 42 Rule 6 of the Civil Procedure Rules.
28. My above findings notwithstanding, this court is alive to the fact that it must, in the interest of justice, balance the interests of the parties as while the Respondents are entitled to enjoy the fruits of their judgment, the Appellants are equally entitled to pursue their appeal to its logical conclusion. As was held in ***Suleiman vs. Amboseli Resort Limited [2004] 2 KLR 589*** the Court should always opt for the lower rather than the higher risk of injustice. In this regard, granting stay will preserve the substratum of the appeal.
29. For the reasons stated in this ruling and having considered the Court makes the following orders:
- a) Stay of execution of the surcharge orders and all consequential processes is hereby granted pending the hearing and determination of the appeal.***
 - b) The stay is granted on condition that the Appellants shall provide security by depositing the entire decretal sum in court within 45 days***

from the date of this order failure of which the stay orders granted herein shall automatically lapse.

c) Costs of the Application shall abide the outcome of the appeal.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF APRIL, 2026.

HON. W. A. OKWANY

JUDGE

16/04/2026

FOR APPELLANT Miss Macharia for Kago

FOR THE RESPONDENT Muturi

COURT ASSISTANT Abdirizak

Mention before the Deputy Registrar