



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**  
**CIVIL APPEAL E081 OF 2025**

**TOSHA POWER SYSTEM**

**LTD.....APPELLANT**

**-VERSUS-**

**BONVENTURE**

**ORUMA.....RESPONDENT**

**RULING**

1. By Notice of Motion dated 18<sup>th</sup> July, 2025, the Appellant prays for these reliefs:

**1. Spent.**

**2. Spent**

**3. Stay of execution of the decree and judgment in Nakuru CMCC No. E447 of 2024 pending hearing and determination of the Appeal**

**4. That the Appellant be allowed to deposit Kshs.300,000 in Court as security pending the**

**determination of the Appeal herein, such amount already posted to this Court. (Sic).**

2. The Appellant swore an affidavit in support of the Motion.

It is deposed that the lower court has entered judgment for the Respondent in the sum of Kshs.1,464,930 and also granted interest of and costs of Kshs.594, 134 and Kshs.164,900 respectively. An application for stay of execution in the lower court was rejected hence this Appeal and Application. The Appellant further states that he is apprehensive that execution could be levied if stay pending appeal is not ordered.

3. **Samuel Ominde Okasu**, the sole director and shareholder of the Respondent opposes the Application *vide* his affidavit in reply. He accuses the Appellant of filing several similar Applications before the trial court which have been dismissed. The numerous applications are said to be intended to frustrate the respondent's enjoying of the fruits of the judgment entered in its favour. The Applications are indicated as dated 1<sup>st</sup> October 2024, 25<sup>th</sup> January 2025 and 26<sup>th</sup> March 2025 *inter alia*. According to the Respondent, the Applications were either *sub judice* or *res judicata*.

4. For the stated reasons *inter alia*, the Respondent urges the court to dismiss the Application and allow it to execute its decree.
5. The Appellant filed a Supplementary Affidavit reiterating this position. He maintains that execution is voluntarily being levied.
6. The parties filed written submissions which I have perused against the Application and the Reply thereto.
7. **Order 42 Rule 6 CPC 2010** stipulates conditions precedent to grant of stay of execution pending appeal to *wit*; that the Application be brought timeously; that the Applicant should show substantial loss likely to arise and that security for costs must be given. There is no *prima facie* evidence of the Respondent's inability to refund the decretal sum as to require him to make a rebuttal. Substantial loss is not therefore shown to be likely to arise.
8. The condition as to deposit of security for costs is not also properly complied with. The Appellant appears to have already made a deposit into court, yet no such order was made by the Court.

9. Moreover, the Appellant does not come to Court with clean hands as he doesn't deny bringing several similar Applications in the lower court, an abuse of the court process.

10. This Application is in the premises dismissed with costs to the Respondent.

**J. M. NANG'EA, JUDGE.**

**Ruling delivered virtually this 17<sup>th</sup> Day of April, 2026 in the presence of:**

**Appellant's Advocate, Mr. Ashioya**

**Respondent's Advocate, Mr. Mulamba**

**The Court Assistant, Mr Ng'eno.**

**J. M. NANG'EA, JUDGE.**