



Achieng & another t/a Damila Enterprises v Equity Bank (K) Limited (Commercial Case E078 of 2019) [2026] KEHC 3958 (KLR) (Commercial and Tax) (19 March 2026) (Ruling)

Neutral citation: [2026] KEHC 3958 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E078 OF 2019
JWW MONG'ARE, J
MARCH 19, 2026

BETWEEN

LILIA ACHIENG & DAVID OBONYO T/A DAMILA ENTERPRISES PLAINTIFF

AND

EQUITY BANK (K) LIMITED DEFENDANT

RULING

1. By the court's judgment dated 4th July 2025, the Plaintiff's suit was allowed and judgment was entered in their favour and against the Defendant awarding the Plaintiffs damages for breach of fiduciary duty and violation of privacy as follows: Kshs.1,000,000.00/= in suits E076 & E077 of 2019 and Kshs.500,000.00/= in suit E078 of 2019. The Defendant has evinced its intention to appeal against this judgment at the Court of Appeal and it has now approached the court by way of the Notice of Motion dated 28th August 2025 made, inter alia, under section 3 and 3A of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) and Order 42 Rule 6 of the Civil Procedure Rules ("the Rules") principally seeking to stay the execution of the judgment pending hearing and determination of the intended appeal.
2. The application is supported by the grounds set out on its face and the supporting affidavit of the Defendant's Senior Manager, Legal Services, George Mabeya sworn on 28th August 2025. It is opposed by the Plaintiff through the replying affidavit of David Obonyo sworn on 2nd October 2025. The application was disposed by way of written submissions and I will make relevant references to the same in my analysis and determination below.



Analysis and Determination

- 3. It is common ground that the principles that guide the court in an application for stay of execution and proceedings pending an appeal are grounded in Order 42 Rule 6 (2) of the Rules. In order to succeed, the applicant must demonstrate substantial loss may result unless the order of stay is made. It must also demonstrate that the application has been brought without undue delay and lastly, the applicant must give such security as the court may order for the due performance of the decree or order as the case may be. These principles have been buttressed by decisions of superior courts where it was added that the power to order stay of execution is discretionary and must be exercised in such a way that the appeal is not rendered nugatory and that this discretion is based on the facts and circumstances of each case (see Halai & Another v. Thornton & Turpin [1990] KECA 65 (KLR) and Butt v Rent Restriction Tribunal [1979] KECA 22 (KLR))
- 4. The Defendant states that it is aggrieved by the judgment and has already filed an application at the Court of Appeal dated 4th August 2025 seeking leave to file an appeal out of time. That the Plaintiff served a letter dated 25th August 2025 threatening to start execution proceedings within seven days and the Defendant states that if the money is paid out, it will be difficult to recover it if the appeal succeeds, causing it substantial loss. The Defendant states that it is ready to provide security as the court may direct. Whereas I note that the Plaintiff has opposed the application on grounds that no appeal has been filed yet and that the Defendant has not demonstrated the loss it is likely to suffer, I am inclined to granting a stay on condition that it provides security.

Conclusion and Disposition

- 5. I thus allow the application dated 28th August 2025 and grant the stay of execution of the judgment dated 4th July 2025 pending the hearing and determination of the appeal on condition that the Defendant deposits the sum of Kshs.2,500,000.00/= in a joint interest-earning account in the names of the parties’ advocates within thirty (30 days) and costs be deposited in the same account within 30 days of taxation. In default, the order of stay will lapse and the Plaintiff will be at liberty to execute.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 19TH DAY OF MARCH 2026

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J.W.W. MONGARE
JUDGE

In The Presence Of
Ms. Njihia for the Defendant/Applicant.
Mr. Juma for the Plaintiff/Decree holder.
Amos - Court Assistant

