



REPUBLIC OF KENYA



KENYA LAW
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**Kanyiri & 2 others v Cheruyiot (Civil Appeal E094 of 2025)
[2026] KEHC 4337 (KLR) (31 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4337 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL APPEAL E094 OF 2025
JK SERGON, J
MARCH 31, 2026**

BETWEEN

PHILIP MAINA KANYIRI 1ST APPELLANT

BHINDER COOPERATION LTD 2ND APPELLANT

GILBERT KIPTOO TERER 3RD APPELLANT

AND

GEOFFREY KIPLANGAT CHERUYIOT RESPONDENT

*(Being an appeal from the judgment delivered by Honourable F.M. Nyakundi
(Principal Magistrate) on 8th October 2025 vide Kericho CMCC NO. 225 of 2019)*

RULING

1. Before this court is a Notice of Motion application dated 13th January 2026. The application is brought by the Appellants/Applicants (hereinafter “the Applicants”) under the provisions of Order 42 Rule 6 of the *Civil Procedure Rules*, and seeks the following orders;
 - a. That this Honourable Court be pleased to grant a stay of execution of the judgment/decreed in Kericho CMCC No. 225 of 2019 delivered on 8th October 2025 pending the hearing and determination of the appeal.
 - b. That the Honourable Court be pleased to stay the taxation of party and party costs in the said suit pending the hearing and determination of the appeal.
 - c. That upon grant of the stay, the Applicants do provide sufficient security by depositing the entire judgment sum in court.
2. The application is based on the grounds set out on its face and is supported by the affidavit of Philip Maina Kanyiri, the 1st Applicant, sworn on even date.



3. The Applicants contend that judgment was delivered against them in the lower court on 8th October 2025, condemning them to pay the Respondent a sum of Kshs. 305,550/= plus costs and interest.
4. Being aggrieved by the said judgment on liability and quantum, they have lodged this appeal, which they believe has high chances of success.
5. The Applicants argue that no order of stay is currently in force and that the decree is for a substantial sum. They fear that if the Respondent is allowed to execute, they will suffer substantial loss as the Respondent is a person of straw and would be unable to refund the decretal sum if the appeal succeeds. They state that their insurer is ready and willing to deposit the entire judgment sum in court as security.
6. They further contend that the application has been filed timeously and that the Respondent will not suffer any prejudice that cannot be compensated by way of costs.
7. Despite being duly served, the Respondent failed to file a response to the application.
8. Having considered the application, the supporting affidavit, and the applicable law, the sole issue for determination is whether the Applicants have met the threshold for the grant of an order for stay of execution pending appeal as set out under Order 42 Rule 6 of the *Civil Procedure Rules*.
9. Order 42 Rule 6(2) of the *Civil Procedure Rules* provides the conditions for the grant of a stay of execution as follows;
 - (2) 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 that the application has been made without unreasonable delay; and
 - (b) 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.
10. This court must therefore consider three key elements;
 - (i) whether the application was made without unreasonable delay,
 - (ii) whether the applicant will suffer substantial loss if the stay is not granted, and
 - (iii) whether the applicant is willing to provide security for the due performance of the decree.
11. The judgment in the lower court was delivered on 8th October 2025. The present application was filed on 13th January 2026. This is a period of approximately three months. While not filed immediately, the delay is not inordinate and has been adequately explained by the fact that the Applicants needed to instruct counsel and prepare the appeal. The court finds that this application was filed timeously and without unreasonable delay.
12. The most crucial element for a stay of execution is the demonstration of substantial loss. The Applicants have argued that the decretal sum of Kshs. 305,550/= is substantial and that the Respondent is a person of straw, meaning that if the money is paid over to him and the appeal succeeds, they would be unable to recover it.



13. The principles governing this requirement were well settled in the case of *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] eKLR, where the court stated;

“The issue of substantial loss is the cornerstone of the jurisdiction to grant stay of execution. The applicant must show that if the stay is not granted, the appeal, if successful, would be rendered nugatory.”

14. The Applicants have sworn an affidavit stating that the Respondent is a person of straw. While the Respondent has not filed a response to controvert this assertion, the court notes that the judgment sum is not astronomical. However, the fact remains that the Applicants have made a credible argument that they may suffer substantial loss if execution proceeds, as the Respondent's ability to refund the sum is not guaranteed. This is a sufficient basis to find that the requirement of substantial loss has been met.

15. The Applicants have made a clear and unequivocal offer to deposit the entire decretal sum of Kshs. 305,550/= in court as security for the due performance of the decree. This offer demonstrates good faith and provides adequate protection to the Respondent. In the event the appeal fails, the Respondent will have the security of the deposited sum. The court finds that this offer is sufficient to satisfy the security requirement under Order 42 Rule 6(2)(b).

16. The application also seeks a stay of taxation of costs in Kericho CMCC No. 225 of 2019. It is trite that an appeal against the main judgment includes the issue of costs, as costs follow the event. To allow taxation to proceed would defeat the purpose of the stay and could lead to a multiplicity of proceedings. This prayer is merited.

17. Having considered the application, the court is satisfied that the Applicants have met the conditions set out in Order 42 Rule 6 of the *Civil Procedure Rules*.

18. For the reasons set out above, the notice of motion dated 13th January 2026 is merited giving rise to the issuance of the following orders;

- a) A stay of execution of the judgment and decree in Kericho Chief Magistrate's Court Civil Suit No. 225 of 2019 is granted pending the hearing and determination of Kericho High Court Civil Appeal No. E094 of 2025.
- b) The taxation of party and party costs in Kericho Chief Magistrate's Court Civil Suit No. 225 of 2019 is hereby stayed pending the hearing and determination of the appeal.
- c) The stay of execution is granted on condition that the Applicants do deposit the entire decretal sum of Kshs. 305,550/= (Three Hundred Five Thousand, Five Hundred and Fifty Kenya Shillings) in a joint interest-earning account in the names of the advocates for the Applicants and the Respondent, or in court, within 30 (thirty) days from the date hereof. In default, the stay shall automatically lapse.
- d) The costs of this application shall abide the outcome of the appeal.

It is so ordered.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 31ST DAY OF MARCH, 2026

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J. K. SERGON

JUDGE



In the presence of:

C/Assistant – Rutoh/Naomi

Miss Ongwacho for the Appellant

No Appearance for the Respondent

