



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA
CIVIL APPEAL NO. E079 OF 2025

JUDAH KIMATHI KIRIMI.....1ST APPELLANT

DENNIS MUTHII GICHINI.....2ND APPELLANT

VERSUS

GODFREY WANG'OMBE GICHANGI.....RESPONDENT

*[Being an appeal from the ruling of Hon. Claire Wanyama PM in Kerugoya Chief
Magistrate's Court in MCCC No. 150 of 2019 delivered on 25/6/2025.]*

JUDGMENT

[1] The Appellant in this matter moved the Honourable Court by a Memorandum of Appeal dated 9th July, 2025 having been aggrieved and dissatisfied with the Ruling of Hon. Claire Wanyama made on the 25th June, 2025 in Kerugoya Civil Case No. 150 of 2019.

[2] The Appellant raised the following grounds of Appeal:

1. *That the Learned Magistrate erred in law and fact in failing to issue stay of execution and totally disregarded the moratorium issued on 14th August 2024 by the Statutory Manager of Invesco Assurance Company Limited for a period of twelve (12) months effective 14th August, 2024.*
2. *That the Learned Magistrate erred in law and fact in failing to consider that substantial loss may result to the Appellants if execution of the decree issued vide Kerugoya CMCC Number 150 OF 2019 would proceed.*
3. *That the Learned Magistrate erred in law and fact in totally disallowing the Appellants' Notice of Motion dated 28th February, 2024.*

Brief facts

[3] The applicant filed an Application dated 28th February, 2024 in the lower court seeking the following orders:

1. *That this honourable court be pleased to issue stay of execution of the judgment entered on 26th May, 2023 during the pendency of the Moratorium issued on 14th August, 2024 by the Statutory Manager of Invesco Assurance Company Limited for a period of twelve (12) months effective 14th August 2024.*

[4] The application was opposed by the respondent who filed a replying affidavit dated 2/9/2024. He averred that the application was an afterthought since Invesco Assurance was placed under statutory management on 14/8/2024.

[5] The applicant had filed an application for stay of execution in October 2023 which was dismissed. The moratorium did not shield the insured persons from claims by third parties. The application should be dismissed with costs to the respondent.

Appellant submissions

[6] The Insolvency Act No. 18 of 2015 Laws of Kenya defines a creditor to include a person entitled to enforce a final Judgment or final order. The Appellant submits that a moratorium generally places a temporary hold on the enforcement of judgment and claims against a company.

[7] The Appellant further submits that the enforcement includes third party enforcement action, particularly in the case of insolvency or statutory management under the Insurance Act. Further, the moratorium suspends the right of creditor including third parties from taking enforcement actions against the company.

[8] The Appellant relies on the decided case of ***Blue Shield Insurance Co. Ltd vs. Raymond Wambua Mutisya [1997] eKLR*** where the court held that no creditor can enforce a Judgment during a moratorium period without court approval. In the case the creditor had attempted to enforce a claim while Blue Shield was under statutory management. The Court ruled that such enforcement was unlawful, as the moratorium protected the company's assets and facilitated an orderly winding up process.

[9] It is the Appellant's submission that the Lower Court failed to consider that there was a moratorium in place and that the Respondents herein failed to seek leave before proceeding with execution as per the Insolvency Act.

[10] The Appellant therefore urges this Honourable Court to allow the Appeal dated 9th July 2025 and issue an order setting aside the subordinate's court 's Ruling delivered on 25th June, 2025 dismissing the Appellant's Application dated 28th August 2023 and substituting it with an order allowing the Notice of Motion Application.

Respondent submissions

[11] The Moratorium has lapsed. They submit that this appeal has been overtaken by events and is an academic exercise since the moratorium sought to be relied on by the Appellant lapsed. A lot of events have happened since this appeal was filed on 9/7/2025.

[12] The appellant has sworn a Supplementary Affidavit on 21/8/2025 indicating that Invesco Insurance Co. Ltd has been placed under provisional liquidation. It is clear from the applicant's document that the moratorium has not been extended and it lapsed on 14/8/2025.

[13] The main issue in the appeal was whether a moratorium protects policy holders from debts/claims of third parties or whether it protects debt of the Insurance Company and its debts to creditors.

[14] They submit that the Learned Magistrate's ruling was sound and had no error. The ruling of Hon. Claire Wanyama delivered on 25/6/2025 held that a moratorium is not an automatic stay of execution of decrees against the insured. They rely on the ***In the matter of Blue Shield Insurance Company Ltd (under Statutory Management)***, [2017] eKLR, (Odunga J. as he then was) to support the position that a Moratorium declared under Section 67(c), (10) of the Insurance Act is meant to protect the insurer in this case against its policy holders and its creditors and not the policy holders against proceedings from third parties.

[15] In ground 2 of the Appeal, the Appellant states that the Learned Magistrate erred in law in failing to consider that substantial loss may result to the Appellants if execution of the decree issued vide Kerugogya C.,M.C.C Number 150 of 2019 would proceed. We submit that the Applicants have not demonstrated what substantial loss they are likely to suffer if the stay is denied.

[16] They submit that the Appellants are not likely to suffer substantial loss because they can enforce the same decree from their insurance for reimbursement of the amount he will have paid the Respondent.

[17] The Policy Holder Compensation Fund provides compensation to policyholders of insolvent insurance companies. This fund was established to protect policy holders and ensure claims are settled when insurers become insolvent.

[18] The appellants should pay the whole claim and claim compensation from Invesco Assurance Company Ltd (should it be revived) or; from the Policy Holder Compensation Fund.

Issues

[19] The issues for determination are:

1. *Whether a moratorium declared under Section 67C of the Insurance Act protects insured persons (policy holders) from execution proceedings by third parties.*
2. *Whether the Appellants demonstrated substantial loss to warrant stay of execution.*
3. *Whether the appeal has been overtaken by events.*

Analysis

Whether the moratorium protected the appellants from execution

[20] The Appellants contend that the moratorium suspended enforcement of judgments, including third-party claims, and relied on ***Blue Shield Insurance Co. Ltd vs. Raymond Wambua Mutisya*** [1997] eKLR where the court upheld that no creditor can enforce a Judgment during a moratorium period without court approval.

[21] However, the question before the court is not validity of execution against the insurance company under a moratorium, but **whether a moratorium declared under Section 67C of the Insurance Act protects insured persons (policy holders)** from execution proceedings by third parties.

[22] ***In the matter of Blue Shield Insurance Company Ltd (under Statutory Management)***, supra, the High Court (Odunga J. as he then was) held:

“A moratorium is meant to protect the insurer against policy holders and creditors. It is not meant to protect policy holders and shield them from meeting their liabilities which they may be obligated to perform for third parties whether in contract, tort or under statute.”

[23] Similarly, ***In re Blue Shield Insurance Company Ltd*** [2020] KEHC 8380 (KLR) (L. Njuguna, J. as she then was) said:

“My understanding of Section 67C (10) of the Insurance Act is that declaration of a moratorium can only be made on payment to the policy holders and the creditors as it is meant to protect the insurer against the policy holders and the creditors but not to shield them from meeting their liabilities to third parties. It is also fair and just that the orders made on 28th October 2011 are set aside to enable the proposed interested party pursue his rights.”

[24] The statutory objective of a moratorium under Section 67C is to preserve the assets of the insurer and ensure orderly management. It does not create an automatic statutory stay of execution against insured persons.

[25] The judgment in Kerugoya CMCC No. 150 of 2019 was against the Appellants personally. The decree-holder was enforcing a lawful judgment against them not against the insurer on whom a moratorium may have been declared.

[26] Accordingly, the learned Magistrate did not err in holding that the moratorium did not operate as an automatic shield against execution proceedings.

Whether substantial loss was demonstrated

[27] The principles governing stay of execution are settled. In ***Butt v Rent Restriction Tribunal*** [1979] eKLR, the Court of Appeal held that the power to grant stay is discretionary and must be exercised judiciously.

[28] Further, in ***Kenya Shell Ltd v Benjamin Karuga Kibiru*** [1979] eKLR, the Court emphasized that substantial loss is the cornerstone of an application for stay.

[29] The Appellants merely stated that execution would occasion substantial loss but did not demonstrate their inability to recover sums paid if the appeal succeeded. Further, that the respondent was impecunious. Lastly, that irreparable harm would occur.

[30] It is trite law that execution of a lawful decree does not, in itself, amount to substantial loss. The learned Magistrate correctly found that substantial loss had not been demonstrated. Despite the decretal amount not being insignificant, having found that the moratorium did not stay or protect the insured from payment of the decree, a lawful execution of decree could not be said to lead to substantial loss.

Whether the appeal has been overtaken by events

[31] The Respondent submitted that the moratorium lapsed on 14th August 2025 and that Invesco Assurance Company Limited has since been placed under provisional liquidation. Since the moratorium period has expired, the primary basis of the Appellants' application has ceased to exist.

[32] Most significantly, Courts have held that a moratorium on an insurer does not operate to stay or set aside a liability established on the insured person who is liable to meet the lawful decree of the Court made against him. See for instance, the recent *Luxury Suttles Tours & Travel Ltd & another v Njoroge & another (Civil Application E148 of 2025) [2026] KECA 206 (KLR) (6 February 2026) (Ruling)*, where the Court of Appeal in declining an application for stay of execution pending appeal said:

“18. As regards whether the intended appeal is arguable, we note that although the applicants' intended appeal is against the decision of the High Court that set aside the earlier order of stay of execution granted by the subordinate court, the appellants have neither challenged nor appealed against the decree. We agree with the respondents that in law the liability is primarily that of the applicants as the insured parties. We therefore are not persuaded that the applicants have demonstrated that they have an arguable appeal.”

ORDERS

[33] Accordingly, for the reasons set out above, the Court finds that the appeal has no merit and it is dismissed.

[34] The Respondent shall have the costs of the appeal to be paid by the Appellants.

Order accordingly.

DATED AND DELIVERED THIS 12TH DAY OF MARCH 2026.

EDWARD M. MURIITHI

JUDGE

APPEARANCES:

Ms. Otieno for Mrs. Makworo for the Appellant.

Mr. Mutegi for Ms. A. Thungu for the Respondent.