



**Mogo Auto Limited v Masara & 2 others (Civil Appeal
E012 of 2026) [2026] KEHC 4420 (KLR) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4420 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CIVIL APPEAL E012 OF 2026
TW CHERERE, J
MARCH 19, 2026**

BETWEEN

MOGO AUTO LIMITED APPELLANT

AND

MARY MASARA 1ST RESPONDENT

GOOD FARMLAND MANAGEMENT KENYA LIMITED 2ND RESPONDENT

DENNIS MOKAYA MOCHAMA 3RD RESPONDENT

RULING

1. This ruling concerns the Notice of Motion dated 06th March 2026 brought under Sections 1A, 1B and 3A of the *Civil Procedure Act*, and Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules in which the Appellant is seeking an order of stay of execution of the Judgment and Decree in Nyamira in MCCC E028 of 2023 pending the hearing and determination of the appeal. The application is supported by the affidavit of David Irungu Kimani sworn on 06th March 2026, in which he deposes that the Appellant has filed an appeal challenging liability, that execution is imminent, that recovery of the decretal sum is uncertain, and that the Appellant is willing to provide security.
2. The impugned judgment was delivered on 04th February 2026 in favour of the 1st Respondent, Mary Masara, against the Defendants therein including the present Appellant. The trial court found the Appellant and the 2nd and 3rd Respondents liable in negligence and awarded the 1st Respondent general damages of KES.2,000,000 and special damages of KES. 11,215, exclusive of costs and interest.
3. The record shows that the application was duly served upon the Respondents but no response was filed.



4. Order 42 Rule 6(2) of the Civil Procedure Rules provides the conditions for granting a stay of execution as follows:

“No order for stay of execution shall be made under sub-rule (1) unless:

- (a) the court is satisfied that substantial loss may result to the applicant unless the order is made;
- (b) the application has been made without unreasonable delay; and
- (c) such security as the court may order has been given by the applicant.”

5. On the question of delay, the impugned judgment was delivered on 4th February 2026, and the present application was filed on 6th March 2026. Computing time from the date of judgment, the application was filed on the 30th day. It was therefore filed within time and without unreasonable delay.
6. On whether substantial loss has been demonstrated, the Applicant has expressed apprehension that if the decretal sum of KES. 2,011,215 is paid out, recovery may not be possible should the appeal succeed.
7. The law does not impose a duty on an applicant to prove the financial incapacity of the respondent. It is sufficient for the applicant to raise a reasonable apprehension as to the respondent’s ability to refund the decretal sum.
8. In *National Industrial Credit Bank Ltd v Aquinas Francis Wasike & another* [2006] KECA 333 (KLR), the Court of Appeal held that once such apprehension is expressed, the evidential burden shifts to the respondent to demonstrate ability to refund.
9. In the present case, the 1st Respondent, though served, did not file any response and did not place any material before the Court to demonstrate her ability to refund the decretal sum.
10. Further, in *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] eKLR, the Court held that substantial loss is established where execution would create a state of affairs that would render the appeal nugatory. In the circumstances of this case, payment of the decretal sum in the absence of any assurance of refund exposes the Applicant to the real risk of irrecoverability, thereby rendering the appeal nugatory. I am therefore satisfied that substantial loss has been established.
11. On whether the appeal is arguable, the memorandum of appeal raises, inter alia, the issue whether the Appellant, as a financier of the motor vehicle, was properly held vicariously liable. This is a bona fide issue deserving consideration on appeal.
12. On security, the Applicant has indicated willingness to deposit the decretal sum in a joint interest earning account. This satisfies the requirement under Order 42 Rule 6(2) of the Civil Procedure Rules.
13. Finally, this Court is required to balance the competing rights of the parties. As stated in *Saroya & another v Eastadil International Limited* [2025] KEHC 12177 (KLR), the purpose of stay is to preserve the subject matter of the appeal while balancing the right of a successful litigant to enjoy the fruits of judgment with the right of an appellant to pursue an appeal.
14. In the present case, the 1st Respondent’s interests can be adequately safeguarded by an order for security, while denial of stay would risk rendering the appeal nugatory.
15. In the result, I am satisfied that the Applicant has met the threshold for grant of stay of execution pending appeal. Accordingly, the Notice of Motion dated 06th March 2026 is allowed on the following terms:



1. There shall be a stay of execution of the Judgment and Decree in Nyamira MCCC No. E028 of 2023 delivered on 04th February 2026 pending the hearing and determination of the appeal.
2. The stay is granted on condition that the Appellant deposits the entire decretal sum of KES. 2,011,215 in an interest earning account in the joint names of the advocates for the parties
3. The Appellant shall file and serve the Record of Appeal within 45 days
4. The Appeal shall be disposed of by way of written submissions
5. Costs of the application shall abide the outcome of the appeal
6. Mention before the Deputy Registrar of this Court on 04th May 2026 to confirm compliance with orders 3) and 4)

DELIVERED AT NYAMIRA THIS 19TH DAY OF MARCH 2026

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Hilda

For Appellant - Mr. Ouma for Cheboi Ouma Oriema & Associates Advocates

For Respondents - N/A for Ouma & Ouma Advocates

