



**Assets Recovery Agency v Kioko (Civil Appeal (Application)
E923 of 2025) [2026] KECA 696 (KLR) (25 March 2026) (Ruling)**

Neutral citation: [2026] KECA 696 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL (APPLICATION) E923 OF 2025
K M'INOTI, EC MWITA & B ONGAYA, JJA
MARCH 25, 2026**

BETWEEN

ASSETS RECOVERY AGENCY APPLICANT

AND

MIKE SONKO MBUVI GIDEON KIOKO RESPONDENT

*(Application for stay of execution pending the hearing and determination of
an appeal from the judgment and decree of the High Court of Kenya at Nairobi
(Prof. Sifuna, J.) dated 1st October 2025 in HC AC&ECC No. 16 of 2020)*

RULING

1. Before the Court is a Notice of Motion dated 22nd January 2026 and taken out by the applicant, the Assets Recovery Agency. The relief sought by the applicant under rule 5(2) (b) of the Court of Appeal Rules, is framed as follows:

“2. That this Honourable Court be please to grant a stay of execution of the judgment and orders issued on 1st October 2025 by Hon Justice Prof (Dr.) at the Anti-Corruption and Economic Crimes Division in Anti-Corruption Suit No. 16 of 2020 pending the hearing and determination of the appeal filed vide Civil Appeal Number E923 of 2025 between the assets Recovery Agency v. Mike Sonko Mbuvi Gideon Kioko.” (Emphasis added).

2. In the dispositive part of the impugned judgment, the High Court determined as follows:

“49. The evidence so far on record, is insufficient to support the assertion that the funds flagged by the Applicant and which are the subject of these proceedings, and are on various of the Respondent’s Bank Accounts, are proceeds of crime. There is therefore no legal basis for ordering forfeiture of the said funds to the



Kenya Government as proceeds of crime. In consequence, this suit fails and is hereby dismissed with costs.” (Emphasis added).

3. When the application came up for hearing on the Court’s virtual platform on 4th March 2026, Ms. Muchiri, learned counsel, appeared for the applicant while Mr. Kinyanjui, learned counsel appeared for the respondent, Mike Sonko Mbuvi Gideon Kioko.
4. When the Court inquired from counsel for the applicant whether it could stay execution of a judgment that has dismissed a suit, counsel was of the view that the Court can indeed issue an order of stay of execution even in cases like the present, where the trial court has dismissed a suit. She cited section 97 of the *Proceeds of Crime and Anti-Money Laundering Act* (POCAMLA) and submitted that a preservation order and any order authorising seizure of property in force at the time of making a forfeiture order remains in force pending the outcome of any appeal against an impugned decision.
5. Mr. Kinyanjui was of a different mind, submitting that the Court cannot stay a negative decree and that section 97 of POCAMLA has no relevance to applications under rule 5(2)(b) of the Court of Appeal Rules. He contended that under section 89(1) (b) of POCAMLA, a preservation order stands rescinded upon conclusions of proceedings against a party.
6. We have considered the application before the Court as framed and the submissions by counsel. The first irony in the applicant’s submissions is that, if truly section 97 of POCAMLA grants it an automatic continuation of the preservation order issued in the trial court, then why pursue an application for stay of execution in this Court?
7. Be that as it may, it is a well established principle that this Court will not, in an application under rule 5(2) (b), issue an order of stay of execution of a decision of a superior court below, where such court has merely dismissed a suit. In that scenario, there is nothing to stay in a negative order which does not direct the applicant to do or refrain from doing something.
8. As long ago as 1976, in *Western College of Arts and Applied Sciences v. E. P. Oranga & 3 Others* [1976] eKLR, the predecessor of this Court, the Court of Appeal for East Africa, held as follows on the issue:

“But what is there to be executed under the judgment, the subject of the intended appeal? The High Court has merely dismissed the suit, with costs. Any execution can only be in respect of costs...In the instant case, the High Court has not ordered any of the parties to do anything, or to refrain from doing anything, or to pay any sum. There is nothing arising out of the High Court judgment for this Court, in an application for a stay, to enforce or refrain by injunction.”
9. In similar terms, in *George ole Sangui v. Kedong Ranch Ltd* [2015] eKLR the Court reiterated the position as follows:

“In the instant case, the High Court dismissed the suit in which the applicants were seeking a declaration and an order to be registered as the proprietors of the suit land on the basis of the doctrine of adverse possession. The dismissal order cannot be enforced and is not capable of execution. It is not a positive order requiring any party to do or to refrain from doing anything. It does not confer any relief. It simply determined the suit by making a finding that the claimant was not entitled to the reliefs or orders sought and dismissed the suit against the respondent. That was not a positive order that required any party to do or refrain from doing anything. It was not capable of execution or enforcement. The act of dismissal of the



suit could not be stayed. It is our finding that to the extent to which the application seeks stay of the order of the dismissal of the suit it cannot be granted.”

10. There are a myriad other decisions upholding that position, among them, Devani & 4 Others v. Joseph Ngindari & 3 Others (CA No. Nai 136 of 2004); Exclusive Estates Ltd v. Kenya Posts and Telecommunications Corporation & Another [2005] 1 EA 53; Mombasa Sea Port Duty Free Ltd v. Kenya Ports Authority (CA No. Nai. 242 of 2006); Stanbic Bank Kenya Ltd v. Kenya Revenue Authority (CA No. Nai 294 of 2007); Republic v. Kenya Anti-Corruption Commission & 2 Others (CA No. 51 of 2008); F & S. Scientific Ltd. v. Kenya Revenue Authority & Another (CA No. 260 of 2012); Marangu Rucha & another v. Attorney General & 10 Others (CA No. 180 of 2013); Daniel Lomagul Kandeji & 2 Others v. Kamanga Holdings Ltd & 40 Others [2017] KECA 551 (KLR); Mwangi Gikonyo & Another v. Mukumbu Wambui [2022] KECA 1033 (KLR); and Nduati v. Nduati [2026] KECA 251 (KLR).
11. The short of it is that rule 5(2) (b) of the Court of Appeal Rules offers the applicant other efficacious remedies, but for reasons best known to it, it opted to seek a remedy that the Court cannot issue in the circumstances of this case.
12. To the extent that the applicant seeks an order of stay of execution against a judgment dismissing its suit, the Court cannot issue such an order. Accordingly, the applicant’s notice of motion dated 22nd January 2026 has no merit and is hereby dismissed with costs to the respondent. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 25TH DAY OF MARCH, 2026.

K. M’INOTI

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JUDGE OF APPEAL

E. C. MWITA

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JUDGE OF APPEAL

B. ONGAYA

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR.

