



**Arusei v Heme Freighters & another (Civil Appeal E291 of 2025)
[2026] KEHC 5587 (KLR) (28 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5587 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E291 OF 2025
RN NYAKUNDI, J
APRIL 28, 2026**

BETWEEN

JOHN KIPYEGO ARUSEI APPELLANT

AND

HEME FREIGHTERS 1ST RESPONDENT

ABRAHAM KIPKORIR CHELUGET 2ND RESPONDENT

RULING

1. Before this Court is a Notice of Motion dated 1st December 2025, brought under the provisions of Order 9 Rule 5, Order 42 Rule 6 and Article 159 (a) (d) (e) of the Constitution of Kenya 2010. The Applicant seeks the following orders:
 - a. Spent.
 - b. The honorable Court be pleased to issue an interim stay of execution of the judgement delivered on 7th November 2025 and all other consequential orders pending the hearing and determination of this application inter parties.
 - c. This honorable Court be pleased to grant stay of execution of the judgment delivered on 7th November 2025 and all consequential orders pending hearing and determination of the appeal.
 - d. Costs of this application be in the cause.
 - e. Such other orders be made as are just and expedient.
2. The application is based on the following grounds:
 - a. The honorable Court delivered judgement on 7th November 2025 against the Appellant/Applicant by dismissing the Appellant's claim and allowing the 2nd Respondent's counter claim.



- b. In dismissing the Appellant's claim and allowing the 2nd Respondent's counter claim, the trial Court was of the opinion that the 2nd Respondent is the lawful proprietor of the tractors registration number KTCC 851H, KTCC 869H, KTCC 848H, KTCC 849H, KTCC 846H, KTCC 850H & KTCC 847H.
 - c. The honorable Court further issued an order that the Appellant pays the 2nd Respondent the sum of 44,900 Euros (Kshs 6,690,00/=) as purchase consideration for the tractors within 45 days from the date of delivery of judgement. The honorable Court further issued an order directing the National Transport and Safety Authority (NTSA) to nullify the logbooks issued in the name of the Appellant and register the tractors in the name of the 2nd Respondent.
 - d. The Applicant being aggrieved by the judgment delivered on 7th November 2025 as the lawfully purchaser of the tractors subject to the suit intends on appealing the whole judgement.
 - e. An order for stay of execution pending the hearing and determination of this application and the appeal shall serve the interests of justice and prevent the appeal from being rendered nugatory.
 - f. Unless the said judgement is stayed, the 2nd Respondent may execute and render the Appellant/ Applicant to substantial loss.
 - g. This application is made in good faith and has been lodged expeditiously.
 - h. It is in the interest of justice this application ought to be allowed.
3. In support of the application is the annexed affidavit of one John Kipyego Arusei who deponed as follows:
- a. That I am the Applicant/Appellant herein hence competent to make and swear this affidavit.
 - b. That judgement was delivered on 7th November 2025 in favour of the 2nd Respondent to the effect that the 2nd Respondent is the lawful proprietor of tractors registration number KTCC 851H, KTCC 869H, KTCC 848H, KTCC 849H, KTCC 846H, KTCC 850H & KTCC 847H.
 - c. That the honorable Court further issued an order I pay the 2nd Respondent the sum of 44,900 Euros (Kshs 6,690,00/=) as purchase consideration for the tractors within 45 days from the date of delivery of judgement.
 - d. The honorable Court further issued an order directing the National Transport and Safety Authority (NTSA) to nullify the logbooks issued in the name of the Appellant and register the tractors in the name of the 2nd Respondent.
 - e. That I am aggrieved by the said judgment as my family began the business of purchasing and importing tractors on my behalf or on before the year 2015. The purchases were done through the 2nd Respondent as my family and I would transfer money to the 2nd Respondent for the purchases and other related expenses.
 - f. That my daughter, Roselyne Jelimo Arusei transferred the sum of 43,299.64 Dollars to the 2nd Respondent for the purchase, shipment and other expenses of the tractors registration number KTCC 851H, KTCC 869H, KTCC 848H, KTCC 849H, KTCC 846H, KTCC 850H and KTCC 847H.



- g. That my son Shadrack Kiprono Kogei transferred the sum of 9,751 Dollars to Beukeveld Exports B.V. through his company Roshaway Limited for the purchase of the said tractors. The money transfer was acknowledged by the 2nd Respondent vide an email dated 22nd December 2020
 - h. That I also transferred the sum of 19,724.77 Dollars to the Edward Beukeveld of Beukeveld Exports B.V for the purchase of the tractors subject to this suit.
 - i. That the trial Court held that the invoices dated 29/3/2023 and 21/8/2023 clearly proved that monies for the purchase was transferred from the 2nd Respondent's account and thus he is the lawful owner of the tractors subject to this suit. However, my family and I transferred the monies to the Respondent for the purchase and other related expenses therefore the payments were made on behalf by the 2nd Respondent.
 - j. That in addition, the 2nd Respondent did not produce his bank statement before the trial Court to show that he had the monies for the purchases and that there were no transfers from me or members of my family to his account.
 - k. That the tractors registration number KTCC 851H, KTCC 869H, KTCC 848H, KTCC 849H, KTCC 846H, KTCC 850H and KTCC 847H were all registered in my name in my capacity as the lawful owner of the tractors.
 - l. That there was no evidence from the 2nd Respondent to prove that I was his agent in the purchase and importation of the tractors and therefore the order issued by the trial Court that that I pay the 2nd Respondent the sum of 44,900 Euros (Kshs. 6, 690,000/-) as purchase consideration for the tractors and/or the National Transport and Safety Authority (NTSA) to nullify the logbooks issued in my name and register the tractors in the name of the 2nd Respondent is prejudicial to me as the purchase and shipment of the tractors was financed by me and my family.
 - m. That it is of utmost urgency and in the interest of justice that this Honourable Court be pleased to stay execution of the judgement delivered on 7th November 2025 pending the hearing and determination of this application and subsequently pending the determination of the appeal as I stand to suffer irreparable and substantial loss as the lawful owner of the tractors.
 - n. That I am ready to abide by any terms as the Court may deem just to set for the granting of the orders sought herein.
 - o. That absolutely no prejudice will be suffered by the Respondents if the orders sought herein are granted.
4. This application is premised in the memorandum of appeal against the judgment of the Court delivered on 7th November 2025 in Eldoret CM's Court Civil Suit 467 of 2023 in which the following grounds are set to be argued before the High Court
- a. The Learned trial Magistrate erred in law and in fact in dismissing the Appellant's claim without considering the Appellant's evidence on record that he lawfully purchased the tractors registration number KTCC 851H, KTCC 869H, KTCC 848H, KTCC 849H, KTCC 846H, KTCC 850H and KTCC 847H tractors through the 2nd Respondent.



- b. The Learned Trial Magistrate erred in law and in fact in allowing the counter-claim in favour of the 2nd Respondent without taking into consideration the evidence filed by the Appellant that he lawfully purchased the tractors through the 2nd Respondent.
 - c. The Learned Trial Magistrate erred in law and in fact by issuing a declaration that the 2nd Respondent is the lawful proprietor of the tractors registration number KTCC 851H, KTCC 869H, KTCC 848H, KTCC 849H, KTCC 846H, KTCC 850H and KTCC 847H despite relevant and sufficient evidence that the Appellant and his family financed the purchase of the tractors.
 - d. The Learned Trial Magistrate erred in law and in fact by issuing an order that the Appellant pays the 2nd Respondent the purchase price for the entire consignment in the sum 44,900 Euros (Kshs. 6,690,000/=) despite relevant and sufficient evidence that the Appellant and his family financed the purchase of the tractors.
 - e. The Learned Trial Magistrate erred in law and in fact by issuing an order that the National Transport and Safety Authority (NTSA) shall cause the logbooks issued in the names of the Appellant be nullified and the said vehicles be registered in the name of the 2nd Respondent despite sufficient evidence on record that the Appellant was lawfully registered as the owner of the vehicles.
 - f. The Learned Trial Magistrate erred in law and in fact in failing to properly analyze the evidence on record.
 - g. The Learned Trial Magistrate erred in law in failing to consider the Appellant's submissions and the Appellant's overwhelming evidence.
 - h. REASONS WHEREFORE it is proposed that this appeal be allowed with costs and the judgment against the Appellant be interfered as follows:
 - i. That the judgment and decree of the trial Court in Eldoret Magistrate's Court Civil Suit No. E467 of 2023 dated 7th November 2025 be set aside forthwith.
 - ii. A declaratory order that the Appellant is the legal owner of the tractors registration number KTCC 851H, KTCC 869H, KTCC 848H, KTCC 849H, KTCC 846H, KTCC 850H and KTCC 847H.
 - iii. An order for injunction be issued restraining the Respondents, their agents, servants, employees and any other person acting on their behalf from taking possession and ownership of the tractors registration numbers KTCC 851H, KTCC 869H, KTCC 848H, KTCC 849H, KTCC 846H, KTCC 850H and KTCC 847H.
 - iv. Costs of this appeal be granted to Appellant.
5. It is on this basis the Applicant seeks stay of execution of judgement so as not to render the appeal moot.

Decision

6. Decided cases on stay of execution pending appeal in the High Court of Kenya frequently hinge on whether the appeal is arguable and if refused would render the appeal nugatory. The key principles and procedures on such applications include: Court Hierarchy: Applications must first be made to the judge of the Court of First Instance who made the order, or else to the Court of Appeal. The "Nugatory" Test: A stay is generally granted if the appeal, if successful, would be rendered useless



(nugatory).Exceptional Circumstances: A stay is not automatic; the applicant must show special or exceptional circumstances, often proving that the winner cannot repay the money if the appeal succeeds.Security: The Court often grants a stay on conditions, such as paying the judgment sum into Court or providing a bank guarantee

7. The application for stay is premised and governed by Order 42 Rule 6(1) of the CPR in which the following authorities have applied it to develop the jurisprudential principles upon which exercise of discretion can be invoked to grant or decline the prayers on stay of execution of an impugned judgment:James Wangalwa & Another v Agnes Naliaka Cheseto [2012] KEHC 1094: A landmark High Court ruling frequently cited for outlining the principles for granting a stay, including proving that an appeal is not frivolous and that refusal of the stay would cause substantial lossRWW v EKW [2019] KEHC 6523 (KLR): Cited in subsequent rulings regarding the criteria for exercising discretion to grant a stay of execution.Alexander A. Reuben V Nguriatudo Ngiroo & Anoher [2021] KEELC 4561: The Court held that a delay of less than three months was not unreasonable and granted a stay to prevent the eviction of defendants while an appeal was pending, ensuring the appeal was not rendered nugatory.Focin Motorcycle CO. Limited v Ann Wambui Wangui & Another [2018] KEHC 8358 (KLR): Referenced regarding the application of the Civil Procedure Rules.Machira t/a Machira & Co. Advocates v East African Standard [2002] KEHC 1167(KLR): An earlier case that established standards for justifying a stay of execution.Masisi Mwita V Damaris Wanjiku Njeri [2016] KEHC 7349 (KLR): Detailed the evidentiary requirements for an applicant seeking to show substantial loss.
8. It is trite that right of appeal must be balanced against an equally weighty rigid right of the plaintiff to enjoy the fruits of the judgment delivered in his favour. In the case of Samvir Trustee Limited vs Guardian Bank Limited [2007] eKLR the Court stated: -

“ The Court in considering whether to grant or refuse an application for stay is empowered to see whether there exist any special circumstances which can sway the discretion of the Court in a particular manner. But the yardstick is for the Court to balance or weigh the scales of justice by ensuring that an appeal is not rendered nugatory while at the same time ensuring that a successful party is not impeded from the enjoyment of the fruits of his judgment. It is a fundamental factor to bear in mind that a successful party is prima facie entitled to fruits of his judgment; hence the consequence of a judgment is that it has defined the rights of a party with definitive conclusion.”
9. The principles guarding the grant or refusal of stay of execution pending appeal would fall under for consideration only if there is a valid appeal pending. In the instant case there is already a memorandum of appeal showing there is a valid appeal which has been entered and pending against the judgment of the Trial Court. There is therefore a valid basis to order a stay of execution of such judgement pending the hearing and determination of the appeal.
10. In view of the foregoing I find that substantial loss would be occasioned against the Applicant intended Appellant if an order of stay is not granted. In this respect there shall be stay of execution and enforcement of the impugned judgement pending the hearing and determination of the appeal conditioned on the record of appeal being filed within 45 days from today’s ruling.

DATED, SIGNED AND DELIVERED AT ELDORET VIA CTS THIS 28TH DAY OF APRIL 2026

R. NYAKUNDI

JUDGE

