



2. The application is supported by grounds on the face of the motion and the supporting affidavit and further affidavit of Eunice Dobby, the Director of Administration and Finance of the Respondent/Applicant, sworn on 6<sup>th</sup> February, 2026, and 3<sup>rd</sup> March, 2026, respectively.
3. The Applicant argues that on 28<sup>th</sup> January 2026, the Court delivered judgment in favour of the Claimant/Respondent, awarding USD 40,000 and relocation costs against the Respondent, despite dismissing the substantive claim. It avers that it has filed and served a Notice of Appeal, intending to challenge the decision.
4. The Respondent contends that the intended appeal is arguable and meritorious, as outlined in the annexed draft Memorandum of Appeal. It avers that the trial court erred by awarding USD 40,000 and relocation costs despite finding that the Respondent's termination was lawful, fair, and non-discriminatory.
5. The Respondent/Applicant maintains that although the substantive claim was dismissed, the court inconsistently proceeded to grant monetary awards, thereby setting an erroneous precedent. It avers that the court failed to consider that the Respondent had rejected an earlier offer of USD 30,000 as a separation package, making it unreasonable to expect payment or proof of remittance.

6. It is the Applicant's assertion that, having rejected the separation package and opted to litigate, any reliefs should only have been granted upon strict proof, which was not met, hence the court improperly introduced and awarded notice pay despite finding the termination fair and compensation under Section 49(1)(c) inapplicable.
7. The Applicant further avers that the award of three months' salary in lieu of notice lacked legal and factual basis, and that the court awarded relocation costs despite acknowledging that no evidence had been provided to support such expenses.
8. The Respondent contends that the award unjustly benefited a party alleged to have acted in bad faith during negotiations.
9. In its further affidavit, the Applicant contends that due to its current financial position, a deposit of Kshs.1,000,000 is reasonable and sufficient as security for costs pending the hearing and determination of the appeal against the Judgment delivered on 28<sup>th</sup> January 2026.
10. The deponent avers that the Claimant/Respondent was engaged under the WRA-RECSA Grant, whose funding was terminated by the U.S. State Department, leaving the Applicant without funds to sustain staff salaries as at 30<sup>th</sup> September 2024. The Applicant further states that any expenditure in relation to this matter, including the

provision of security for costs, is subject to prior budgetary allocation and approval by the Council of Ministers representing the Member States. It is its position that under Article 10(6)(c) of the RECSA Agreement, the Council of Ministers is mandated to approve the Center's budget, and that Article 4 of the Agreement provides that the Council convenes in ordinary session once every two years, thereby affecting the timeliness of accessing funds.

11. Accordingly, the Applicant asserts that the proposed sum of Kshs.1,000,000 constitutes adequate and reasonable security for the due performance of any decree that may ultimately be binding, pending the determination of the appeal.

12. The Claimant/Respondent opposed the application vide a Replying affidavit sworn on 24<sup>th</sup> February, 2026.

13. The Claimant/Respondent states that under Order 42 Rule 6(2) of the Civil Procedure Rules, an applicant seeking stay of execution must meet three conditions, namely demonstrate substantial loss, that the application is made without unreasonable delay, and provide adequate security for due performance of the decree. He avers that the Applicant has failed to demonstrate any substantial loss if the decretal sum is paid.

14. The Claimant further states that the proposed security of Kshs.1,000,000 is inadequate as it does not cover the full

decree, and granting a stay on such terms would unjustly deny him the benefit of a lawfully obtained judgment.

15. The Claimant/Respondent's submissions dated 11<sup>th</sup> March, 2026, have been duly considered.

### **Determination**

16. Order 42 Rule 6 (1) and (2) of the Civil Procedure Rules provides for stay of execution in the following words:-

***“(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.*”**

**(2) 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 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.”**

17. The grant of an order of stay is an equitable remedy that is given at the discretion of the court. The general rule, however, is that if there is no overwhelming hindrance, a stay of execution ought to be granted so that an appeal, if successful, may not be rendered nugatory. Cotton L J in **Wilson v Church (No 2) 12 Ch D (1879) 454** held:-

**“I will state my opinion that when a party is appealing, exercising his undoubted right of appeal, this court ought to see that the appeal, if successful, is not nugatory.”**

18. The Court’s exercise of discretion in staying execution of a judgment was further explained in the case of **Stephen Wanjohi v Central Glass Industries Ltd Nbi HCCC No. 6726 of 1991**, where the Court emphasized that:-

***“For the Court to grant a stay of execution, there must be:***

***(a) Sufficient cause.***

***(b) Substantial loss.***

***(c) No unreasonable delay and security offered for due performance of the decree.”***

19. The Applicant’s position is that it is financially constrained due to the withdrawal of donor funding and for the reason that its expenditure is subject to approval by the Council of Ministers. It maintains that it may suffer hardship in satisfying the decree issued in this matter.

20. The law, however, requires more than a general financial difficulty in satisfying the decree as a ground to allow an application for stay. The Court of Appeal in ***Kenya Shell Limited -v- Benjamin Karuga Kibiru & Another (1986) KLR 410***, held:-

***“Substantial loss in its various forms is the cornerstone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore, without this evidence, it is difficult to see why the respondents should be kept out of their money.”***

21. The law further requires an applicant to show that the Respondent would be unable to refund the decretal sum

should the appeal succeed. (See ***National Industrial Credit Bank Ltd v Aquinas Francis Wasike & Another [2006] KECA 333 (KLR)***).

22.The Applicant has not demonstrated that the Claimant is a person of no means or incapable of refunding the decretal sum, but has centered the argument on its own financial constraints rather than the risk of irrecoverability.

23.In my considered view, financial inconvenience alone does not amount to substantial loss, and I therefore hold that the Applicant has not demonstrated substantial loss.

24.On whether the application was filed without unreasonable delay, it is evident from the record that the impugned judgment was delivered on 28<sup>th</sup> January 2026, and the present application was filed on 6<sup>th</sup> February 2026.

25.This was a delay of approximately 9 days, which in my view is not unreasonable.

26.The Applicant has thus shown that the motion was filed without undue delay.

27.On the requirement for security for costs, the decretal award is over USD 40,000, yet the Applicant proposes Kshs.1,000,000 as security.

28.Security, in my view, must be commensurate with the decree. In ***Focin Motorcycle Co. Ltd v Ann Wambui Wangui & Another [2018] KEHC 8358 (KLR)***, the Court

held that security is meant to guarantee the due performance of the decree and must not be illusory or merely nominal.

29. The Applicant herein has proposed a sum that is substantially below the decretal amount on the basis of internal budgetary constraints, which does not override the legal requirement for adequate security.

30. In light of the foregoing, I will proceed to allow the application, and I hereby grant a stay of execution of the Judgment delivered in this matter on 28<sup>th</sup> January, 2026, and the decree therein, conditional on the Applicant depositing the total decretal sum in court within 30 days, and in default, the Claimant/Respondent shall be at liberty to execute.

31. Orders accordingly.

**SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 7<sup>TH</sup> DAY OF MAY, 2026.**

**C. N. BAARI  
JUDGE**

**Appearance:**

Mr. Olando h/b for Mr. Odongo for Claimant/Respondent

Ms. Korir h/b for Mr. Masai for the Respondent/Applicant

Ms. Esther S - C/A