



REPUBLIC OF KENYA



KENYA LAW
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Shine Automobiles Limited c/o Classic Shuttle Sacco v Alusiola (Civil Appeal 195 of 2025) [2026] KEHC 5593 (KLR) (28 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5593 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL 195 OF 2025
RN NYAKUNDI, J
APRIL 28, 2026**

BETWEEN

**SHINE AUTOMOBILES LIMITED C/O CLASSIC SHUTTLE
SACCO APPELLANT**

AND

SAIMON ALUSIOLA RESPONDENT

RULING

1. Before this Court is a notice of motion dated 12th day of February 2026 brought under Section 1A, 1B, 3A of the *Civil Procedure Act*, Order 42 Rule 6(1) & 6(2), Order 51 Rule 1 of the Civil Procedure Rules 201, the *Auctioneers Act* No. 5 of 1996, Rule 12 of the Auctioneers Rules 1997. The Applicant seeks the following orders:
 - a. That there be a temporary stay of execution of the Judgment and Decree in Eldoret CMCC No. 98 of 2019-Saimon Alusiola vs Shine Automobiles Limited c/o Classic Shuttle Sacco, and in particular stay of sale, removal, or further execution against the Appellant's movable property pending the hearing and determination of this Application inter partes.
 - b. There be an order of stay of execution pending the hearing and determination of the Appeal, on such terms as this Honourable Court may deem fit.
 - c. The Warrants of Attachment dated 5th January 2026 and all consequential execution proceedings carried out by Eshikhoni Auctioneers be declared unlawful, irregular, and be set aside, for want of service of a proclamation notice as required under Rule 12 of the Auctioneers Rules, 1997.
 - d. If the alternative, and without prejudice to the foregoing, this Honourable Court be pleased to order release of the attached movable property upon such security as the Court may direct,



including deposit of the decretal sum in a joint interest-earning account in the names of both advocates on record.

- e. This Honourable Court be pleased to find that the directions issued by the Deputy Registrar scheduling the matter for mention on 20th February 2026, despite the certified urgency of the Application dated 7th February 2026, were ultra vires and had the effect of defeating the urgency and exposing the Appellant to imminent sale of the attached property.
 - f. Costs of this Application be provided for.
2. The application is based on the following grounds:
- a. Judgment was delivered on 30th July 2025 against the Appellant, who has since lodged an appeal challenging quantum.
 - b. Execution has commenced, and the Appellant's movable property has already been attached pursuant to Warrants of Attachment dated 5th January 2026.
 - c. The attachment was conducted without prior service of a proclamation notice, contrary to the mandatory provisions of Rule 12 of the Auctioneers Rules, 1997, rendering the execution unlawful and procedurally irregular.
 - d. Unless stay orders are granted, the attached property is at risk of imminent sale, thereby rendering the pending appeal nugatory and occasioning substantial loss to the Appellant.
 - e. The Appellant is ready and willing to furnish security, including deposit of the decretal sum in a joint interest-earning account, and is desirous of prosecuting the appeal without delay.
 - f. The Deputy Registrar's directions fixing mention on 20th February 2026 despite the certified urgency were ultra vires and effectively defeated the urgency of the stay application.
 - g. It is in the interest of justice, fairness, and proportionality that execution be stayed and the impugned execution process be set aside pending appeal.
3. In support of the application is the affidavit sworn by Choni Kevin who deponed as follows:
- a. That I am an Advocate of this Honourable Court and the Advocate in personal conduct of this suit on behalf of the Appellant/Applicant and am therefore competent and duly authorized to swear this Affidavit.
 - b. That Judgment in Eldoret CMCC No. 98 of 2019- Saimon Alusiola vs Shine Automobiles Limited c/o Classic Shuttle Sacco was delivered on 30th July 2025, wherein the trial Court entered judgment against the Appellant and awarded damages on quantum, which decision has necessitated the present appeal.
 - c. That being dissatisfied with the said Judgment, the Appellant has since lodged an appeal challenging the award, and the same is pending determination before this Honourable Court.
 - d. That notwithstanding the pendency of the appeal, the Respondent has proceeded with execution, and Warrants of Attachment dated 5th January 2026 have been issued against the Appellant's movable property.
 - e. That the attachment was carried out by ESHIKHONI AUCTIONEERS without prior service of a proclamation notice upon the Appellant, contrary to the mandatory provisions of the Auctioneers Act, No. 5 of 1996 and Rule 12 of the Auctioneers Rules, 1997, which require service of a seven-day proclamation before removal or sale of movable property.



- f. That as a consequence of the foregoing procedural irregularity, the execution process.
 - g. That unless this Honourable Court urgently intervenes and grants stay of execution, the attached movable property is at risk of imminent sale, which would render the pending appeal nugatory and occasion the Appellant substantial and irreparable loss.
 - h. That the Appellant is ready, willing, and able to comply with any reasonable conditions that this Honourable Court may impose for the grant of stay pending appeal, including deposit of the decretal sum in a joint interest-earning account in the names of both advocates on record.
 - i. That further, despite the certified urgency of the Application dated 7th February 2026, the Deputy Registrar issued directions scheduling the matter for mention on 20th February 2026, a date that would defeat the urgency and expose the Appellant to imminent sale of the attached property.
 - j. That by virtue of my personal conduct of this matter and my knowledge of the procedural posture of the case, I verily state that the issuance of such substantive procedural directions in the face of certified urgency that was required to be placement before the Duty Judge was ultra vires the administrative and jurisdictional mandate of the Deputy Registrar in the circumstances.
 - k. That it is therefore just, fair, and in the interests of justice that this Honourable Court stays execution, sets aside the impugned warrants of attachment, and preserves the subject matter of the appeal pending its hearing and determination.
4. The issue at hand is whether the Applicant has met the criteria for this Court to grant stay of execution of judgment and decree in Eldoret CM’s No. 98 of 2019-Saimon Alusiola vs Shine Automobiles Limited c/o Classic Shuttle Sacco.

Resolution

5. The provisions of Order 42 Rule 6 (1) of the Civil Procedure Rules is one which contains the key ingredients for grant of stay of execution. It provides as follows:
- 6.
- (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of 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.
 - (1)
 - (2) No order for stay of execution shall be made under sub rule (1) unless—
 - (a) the Court is satisfied that substantial loss may
 - (2) result to the Applicant unless the order is made and that the application has been made without unreasonable delay; and



- (3)
- (b) Such security as the Court orders for the due performance of such decree or order as may ultimately be binding on him
- (4) has been given by the Applicant.
- (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.

6.

- (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from

7. except appeal case of in so far as the Court appealed from may order but, the Court appealed from may for sufficient cause

8. order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused

9. by the Court appealed from, the Court to which such appeal is preferred shall be at liberty, on application being made, to

10. consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of

11. stay made by the Court from whose decision the appeal is preferred may apply to the appellate Court to have such order set

12. aside.

13.

- (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from

14. except appeal case of in so far as the Court appealed from may order but, the Court appealed from may for sufficient cause

15. order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused

16. by the Court appealed from, the Court to which such appeal is preferred shall be at liberty, on application being made, to

17. consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of



18. stay made by the Court from whose decision the appeal is preferred may apply to the appellate Court to have such order set

19. aside.

(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of 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.

6. The above conditions have been properly articulated in the case of *Petrazo Limited (Formerly Brighton Limited) & Another v New Oshwal Distributor Ltd & 4 Others* [2025] KEELC 1120 (KLR), while determining undue delay, the honorable Court held as follows:

“On the second issue to determine is where the application for stay of execution was made without inordinate delay. From the record, the judgment being appealed against was delivered on 8th October, 2024 and the application herein was filed on 30th October, 2024, the Notice of appeal on 8th October, 2024. This application was filed after about twenty-two (22) days after the judgment. Clearly, in this Honourable Court’s assessment, the application was made timeously without any delay. Indeed, the application was filed expeditiously and without undue delay.”

7. One of the key principles on the application of stay of execution is whether the Applicant would suffer irreparable harm which cannot be compensated by way of damages. In this branch of law, it is often described as substantial loss. In many of the Superior Court decision the essential elements for what constitutes substantial loss has captured the mind of the justices in the various forums within the Republic of Kenya. One of them which stands out is that of *James Wangalwa & Another V Agnes Naliaka Cheseto Misc Application No 42 of 2011* [2012] eKLR Gikonyo J held that:

No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The Applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal. This is what substantial loss would entail, a question that was aptly discussed in the case of *Silverstein Vs. Chesoni* [2002] 1KLR 867, and also in the case of *Mukuma Vs. Abuoga* quoted above. The last case, referring to the exercise of discretion by the High Court and the Court of Appeal in the granting stay of execution, under Order 42 of the CPR and Rule 5(2) (b) of the Court of Appeal Rules, respectively, emphasized the centrality of substantial loss thus: “...the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.



8. The decisions of the superior Courts in this element under the applications for stay of execution pending appeal is all about a qualitative and non-quantifiable loss that renders the potential success of an appeal worthless. It must be real, worthy and of value rather than a normal temporally inconvenience. The neighboring State of Uganda with whom we share a common heritage has also been laboring on these issues touching on the stay of execution pending appeal. The threshold principles on this subject have been articulated in the following cases: Qualitative Not Quantitative Loss: In *Tropical Commodity Supplies Ltd v International Credit Bank (In Liquidation)*, Justice Ogoola defined substantial loss as a qualitative concept that cannot be measured by a mathematical formula, referring to real loss as opposed to a loss without value. Irreparable Harm (Rendered Nugatory): The core of "substantial loss" is showing that if the execution proceeds, a successful appeal later will be pointless because the status quo cannot be restored. This is often seen in eviction cases e.g., *Naluvugo v Hategyerimana (1977) HCB 79*. Monetary Judgments Threshold: In *Formular Feeds Limited vs KCB Bank (Misc Application No. 1647 of 2023)* and related High Court rulings by Justice Mubiru, it was clarified that stay of execution in monetary judgments requires strict proof of "irreversible harm or failure of restitution." A mere monetary loss that can be repaid if the appeal succeeds is generally not considered substantial loss. Imminent Threat: The loss must be imminent, not hypothetical, as held in *Asaba v Kasangaki (2020) UGHCCD 266*. Irreparable Harm: The Applicant must prove that the respondent cannot or will not be able to refund the money or restore property if the appeal succeeds, as noted in *Oluka v CNOOC Uganda Ltd*.
9. I am mindful of the fact that the mere filing of an appeal does not automatically act as a stay on the execution of a decree under Order 42 Rule 6 of the Civil Procedure Rules. A stay of execution nevertheless is a discretionary power exercised by the Appellate Court only upon establishing sufficient cause which includes proof of substantial loss if the stay is not granted and the provision of security of the decree. In this matter there are issues to deal with the directions issued by the Deputy Registrar regarding the certificate of urgency on matter arising out of the judgement of that Court. I therefore emphasize that notwithstanding the application for stay there are other circumstances which require the Court to exercise discretion on the matter. The directions taken on their face value are likely to impair the intended appeal against the Trial Court judgment.
10. I therefore, having regard to the facts and circumstances to this case I make the following orders:
- a. That there be a stay of execution of the judgment of the trial Court referenced as Eldoret CMCC No. 98 of 2019 pending the hearing and determination of the intended appeal.
 - b. That the Appellant files a record of appeal within 45 days from today's ruling.
 - c. That in view of the decision by this Court all other directions given by the Trial Court are considered moot.
 - d. That a status conference be held on 10th May of 2026 before the Presiding Judge to allocate this matter to himself or to any other Court under his jurisdiction.
 - e. Orders accordingly.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 28TH APRIL, 2026.

.....
R. NYAKUNDI
JUDGE

