



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CORAM: F. MUGAMBI, J
CIVIL SUIT NO. 225 OF 2019

BETWEEN

ARM ENGINEERING COMPANY LIMITED
APPLICANT

VERSUS

KENYA COMMERCIAL BANK LIMITED
RESPONDENT

RULING

Introduction and Background

1. This Ruling is in respect to the Notice of Motion application dated 19th August 2025. The applicant seeks an order of stay of execution of this Court's Judgement dated 8th November 2024, pending the hearing and determination of **Appeal No. 225 of 2019** at the Court of Appeal. The application is anchored on the grounds on the face of it and the sworn affidavits of **Rodgers Mudegu Adai**, the applicant's Project Engineer, sworn on 19th August 2025 and 9th October 2025. The application is

opposed through the Replying Affidavit sworn on 22nd September 2025 by **Geofrey Obae**, the respondent's Sarit Centre branch manager. I have also considered the written submissions filed by the parties in support of their respective cases.

Analysis and Determination

2. The applicable principles in determining whether or not to grant stay orders are well settled. **Order 42, Rule 6 of the Civil Procedure Rules** provides that an applicant must satisfy the following conjunctive requirements for the grant of stay of execution pending appeal; that is to say:
 - i. The application has been made without unreasonable delay;*
 - ii. Substantial loss may result to the Applicant unless the order is made; and*
 - iii. That the Applicant is willing to furnish such security as the court orders for the due performance of such decree.*

3. With respect to the timeliness of the application, I do note that judgment was delivered on 8th November 2024, and a Notice of Appeal was lodged on 11th November 2024. By an email dated

2nd May 2025, the Deputy Registrar notified the applicants that the typed proceedings were ready for collection upon payment of the requisite court fees. The present application was thereafter filed approximately four months later. In the intervening period, the Party and Party Bill of Costs was filed on 20th January 2025, with a Ruling scheduled for September 2025. In view of this chronology, and considering that the stay application was filed in August 2025 against the backdrop of ongoing taxation proceedings, the delay may be regarded as excusable.

4. On the issue of substantial loss and having considered the rival positions, I am persuaded that the applicant has demonstrated the risk of substantial loss. The decretal sum is not insignificant, and once execution is levied, the applicant will be deprived of the very subject matter of the appeal. The law is settled that substantial loss does not only refer to irreparable harm but also encompasses situations where an appeal would be rendered nugatory if stay is not granted.

5. In any event, I note that the respondent is amenable to the grant of stay should this Court deem it fit, but prays that such stay be made conditional upon the applicant depositing the entire sum reflected in the respondent's Party and Party Bill of Costs, being Kshs. 11,690,486.78. The applicant, for his part, has confirmed his willingness to abide by whatever conditions this Court may impose in that regard. In balancing the competing interests of the parties, I am guided by the principle articulated in **RWW V EKW, [2019] eKLR**, that the Court must strive to ensure that an appeal is not rendered nugatory while at the same time safeguarding the rights of the successful litigant to enjoy the fruits of their judgment.
6. A conditional order requiring security for costs serves both ends as it secures the respondent against the risk of non-payment of its costs should the appeal fail, while preserving the applicant's right to prosecute its appeal without undue prejudice. Accordingly, I am persuaded that no prejudice will be occasioned to either party by the imposition of such a condition.

Disposition

7. Accordingly, the application dated 19th August 2025 is allowed on condition that the applicant shall deposit the sum of Kshs. 11,690,486.78 in a joint interest-earning account in the names of both Counsel within thirty (30) days of the date hereof. In default of compliance, the stay orders herein shall stand automatically vacated without further recourse to this Court.

**DATED, SIGNED AND DELIVERED IN NAIROBI
THIS 12TH DAY OF MAY 2026.**

**F. MUGAMBI
JUDGE**

Delivered in presence of:

Ms Gakure for Wairoto applicant
Gichana for Ms Ndirangu for respondent
Court Assistant: Lillian & Gloria