



**Cheruiyot v Minayo (Civil Appeal E285 of 2025)
[2026] KEHC 5836 (KLR) (4 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 5836 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E285 OF 2025
RN NYAKUNDI, J
MAY 4, 2026**

BETWEEN

EVANS KIPLAGAT CHERUIYOT APPLICANT

AND

EDITH MINAYO RESPONDENT

RULING

1. Before this Court is a notice of motion dated on 25th day of November 2025 brought under Article 159 of *the Constitution* of Kenya, Section 3, 3A of the *Civil Procedure Act* Cap 21 Laws of Kenya, Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules and all enabling provisions of the law. The Applicant seeks the following orders:
 - a. Spent.
 - b. That there be a stay of execution of the judgment delivered on 21/10/2025 and the extracted decree thereto in Eldoret CMCC No. E007 of 2025, Edith Minayo Amwayi vs Evans Kiplagat Cheruiyot pending the hearing and determination of this application inter parties.
 - c. That there be a stay of execution of the judgement delivered on 21/10/2025 and the extracted decree thereto in Eldoret CMCC No. E007 of 2025, Edith Minayo Amwayi vs Evans Kiplagat Cheruiyot pending the hearing and determination of the appeal.
 - d. That costs of the application be provided for.
2. The application is based on the following grounds:
 - a. That the trial Court delivered its judgment on 21/10/2025 in favour of the Respondent in the following terms:
 - a) Liability at 100% against the defendant.



- b) General damages.....Kshs. 1,200,000/=
 - c) Special damages.....Kshs. 212,000/=
 - Total payable.....Kshs.1,412,000/=
 - d) Costs of the suit plus interest to the plaintiff
- b. That the Appellant/Applicant has appealed against the said judgment on quantum.
 - c. That the Appellant/Applicant simultaneously after lodging the appeal herein filed an application before the trial Court seeking stay of execution pending appeal.
 - d. That however, the Trial Court certified the application as not urgent, declined to grant interim stay orders and gave a far off mention date on 3/3/2026.
 - e. That the Appellant/Applicant has made a 2nd application to this Court vide the application herein seeking the stay orders pending appeal.
 - f. That the 30 days stay granted by the trial Court at the time of delivery of judgment expired on 20/11/2025.
 - g. That the Respondent is likely to execute the decree herein which will render the appeal nugatory and the Appellant/Applicant will suffer substantial loss in the circumstances.
 - h. That the Respondent's financial ability is unknown and is unlikely to refund the amount in the event the appeal succeeds.
 - i. That the Appellant/Applicant is ready and willing to abide by any reasonable conditions that this honourable Court may impose including depositing the entire decretal sum in a joint interest earning account in the names of both advocates on record.
 - j. That the orders sought will safeguard the interest of the Respondent as well as the defendant/Applicant.
 - k. That this application is made in good faith in the interest of justice and without any undue delay.
 - l. That this application is made in good faith in the interest of justice and without any undue delay.
3. In support of the application is the annexed affidavit of one Ruth Mbalelo who deponed as follows:
- a. That I am the Insurance Officer of the Appellant/Applicant herein hence competent and authorized to swear this affidavit.
 - b. That the insurance company is legally and contractually bound to appoint an advocate on behalf of the Appellant/Applicant and settle/satisfy judgement from accidents during the pendency of the insurance on behalf of the Applicant.
 - c. That the insurance company instructed the advocate on record to defend the claim herein against the Appellant.
 - d. That the trial Court delivered its judgment on 21/10/2025 in favour of the Respondent in the following terms:
 - a) Liability at 100% against the defendant



- b) General damages.Kshs 1,200,000/=
 - c) Special damages.....Kshs 212,000/=
 - Total payable.....Kshs 1,412,000/=
 - d) Costs of the suit plus interest to the plaintiff
 - e. That the Appellant/ Applicant being dissatisfied with the said judgment has filed an appeal herein on quantum.
 - f. That the Appellant/Applicant simultaneously after lodging the appeal herein filed an application before the trial Court seeking stay of execution pending appeal.
 - g. That however, the trial Court certified the application as not urgent, declined to grant interim stay orders and gave a far off mention date on 03/03/2026.
 - h. That the Appellant/Applicant has made a 2nd application to this Court vide the application herein seeking the stay orders pending appeal.
 - i. That the 30 days' stay granted by the trial Court at the time of delivery of judgment expired on 20/11/2025.
 - j. That the Respondent is likely to execute the decree herein which will render the appeal nugatory and the Appellant/Applicant will suffer substantial loss in the circumstances
 - k. That the Respondent's financial ability is unknown and is unlikely to refund the amount in the event the appeal succeeds.
 - l. That the Appellant/Applicant is ready and willing to abide by any reasonable conditions that this honourable Court may impose including depositing the entire decretal sum in a joint interest earning account in the names of both advocates on record.
 - m. That the orders sought herein will safeguard the interest of both parties as the availability of the said amount is guaranteed to both parties.
 - n. That this application is made promptly without undue delay, in good faith and in the interest of justice.
 - o. That I swear this affidavit in support of the application now before Court.
4. In objection to the application by the Applicant is a replying affidavit by Edith Minayo Amwayi dated 15th December 2025 in which he deponed as follows:
- a. That I have read and understood the Applicant/Appellant's application dated 24th November, 2025 and now wish to reply thereto as follows
 - b. That I am advised by Ms. Too, my advocate on record which information I verily believe to be true that the application is incompetent, fatally defective and bad in law as it contravenes the provisions of the Civil Procedure Act and Rules as demonstrated below:
 - a) The Applicant has not adduced any probative evidence that he will suffer substantial loss or damage if he pays the decretal dues.
 - b) The Applicant has not provided any security for the due performance of the decree, the costs and the costs of the appeal.



- c) No sufficient reasons or grounds have been demonstrated to warrant the stay of execution
 - d) The application lacks merit and has no substratum in law.
- c. That I am not a person of straw as alluded by the Applicant, I am a farmer engaging in large scale maize farming hence capable of refunding the decretal sum due in the unlikely event the appeal is successful hence no prejudice shall be occasioned to the Appellant if it liquidates the decretal dues and costs.
 - d. That the Applicant is engaged in forum shopping as he had initially filed a similar application for stay in the trial Court which directions had been given and the same set down for hearing, hence the instant application is an abuse of Court and the same is actuated by malafides in so far as the Applicant merely intends on denying or delaying me from realizing the fruits of the judgment which was legally obtained.
 - e. That I am informed by my advocate on record which information I verily believe to be true that execution is a lawful process which I am allowed by law to pursue.
 - f. That the application is an afterthought and intended to avoid payment of a just and fair debt which is overdue.
 - g. That it is therefore necessary and pertinent that the application be dismissed with costs and the Applicant be ordered to satisfy the judgment in my favour.
 - h. That I swear this affidavit in opposition to the application now before this Honourable Court.
5. Besides the affidavit evidence, the application was canvassed by way of written submissions to beef up the justifiable issues on whether in balancing the rights of the parties in terms of the constitutional right of appeal and the scale of justice can tilt in favour of the Applicant. In this respect learned Counsel for the Appellant submitted grounded on various principles of law to influence this Court to exercise discretion to grant the orders of stay of execution pending the appeal. In furtherance, to this protocol learned Counsel relied in the following statutory provisions being order 42 Rule 6 and the developed principles in the cases; Focin Motorcycle Co. Limited vs. Ann Wambui Wangui and another [2018] eKLR. Although Rule 5(2)(b) is a preserve of the procedural and substantive compliance on stay of execution in equal measure Order 42 Rule 6 of the CPR in the Court exercising discretion must also be satisfied that the appeal or intended appeal an arguable one, that is, not frivolous appeal; secondly, that if an order of stay or injunction, as the case may be, is not granted, the appeal or the intended appeal, were it not to succeed, would have been rendered nugatory by the refusal to grant the order. It is apparent from the record that the Applicant intendeds to exercise his constitutional right of appeal.
 6. Whereas on the part of the Respondent learned Counsel Mr. Too Koskey submitted strongly against any discretion being exercised in favour of the Applicant intended Appellant as there is no evidence that he would suffer substantial loss. With regard to the three pronged issues as stated in Order 42 Rule 6 no Order for stay of execution shall be made under Rule 1 unless- 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. 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, learned Counsel invited the Court to find that the Appellant/Applicant is far from satisfying the threshold condition precedent as outlined in the law and therefore no such discretion should be extended to him. In support of this typology learned Counsel relied on the following authorities: James Wangalwa & Another v Agnes Naliaka Cheseto [2012] eKLR, Arun C. Sharma Vsashanaraikundalia T/A Rairundalia & Co.



Advocates & 2 Others [2014] eKLR and Focin Motorcycle Co. Limited vs. Ann Wambui Wangui and another [2018] eKLR.

In nutshell learned Counsel urged the Court not to exercise discretion to grant stay of execution pending the intended appeal.

7. At this point having reviewed the affidavit evidence, legal issues as argued by both Counsels in their respective submissions, the Applicant/Appellant sets out alleged particulars in the memorandum of appeal to be considered by a Superior Court as against the impugned judgement of the trial Court. Looking at the memorandum of appeal the Court thinks that this is not a fit case for striking out the appeal without necessity of having it considered on the merits. Having applied the law to the facts I exercise discretion under Order 42 Rule 6 to grant stay of execution against the judgment of the trial Court pending the hearing and determination of the appeal. To this end the Applicant/intended Appellant shall have the liberty to file the record of appeal within 30 days from today's ruling with a further condition that he deposits half of the decretal sum to the joint interest earning account in a reputable financial institution within the same period of 30 days or in the alternative be obliged to deposit with the Deputy Registrar of the High Court within the same period. The orders of this application shall abide the outcome of the appeal.

DELIVERED, DATED AND SIGNED AT ELDORET VIA CTS THIS 4TH MAY 2026

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R. NYAKUNDI

JUDGE

