



Chev Energies Limited v Robimart Energy Ltd Formerly Hazina Energies Ltd & another (Civil Appeal E033 of 2026) [2026] KEHC 5838 (KLR) (4 May 2026) (Ruling)

Neutral citation: [2026] KEHC 5838 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E033 OF 2026
RN NYAKUNDI, J
MAY 4, 2026**

BETWEEN

CHEV ENERGIES LIMITED APPELLANT

AND

ROBIMART ENERGY LTD FORMERLY HAZINA ENERGIES LTD 1ST RESPONDENT

IRENE CHEBET 2ND RESPONDENT

(Being an Appeal against the whole Ruling delivered on 6th February 2026 by Hon. Rodgers Otieno in Eldoret SCCCOMM No. E470 of 2026 Chev Energies Ltd. versus Robimart Energy Ltd. formerly Hazina Energies Ltd. and Irene Chebet (Objector))

RULING

1. Before this Court is a notice of motion brought under Section 1A, 1B & 3A of the [Civil Procedure Act](#), Order 22 Rule 22, Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules, and all other enabling provisions of law. The Applicant seeks the following order:
 - a. Spent.
 - b. This honorable Court be pleased to issue stay of execution of the ruling delivered on 6th February 2026 by Hon, Rodgers Otieno in Eldoret SCCCOMM NO. E470 OF 2026 Chev Energies Limited-Versus-Robimart Energy Ltd Formerly Hazina Energies Ltd. and Irene Chebet (Objector) pending the hearing and determination of this application.
 - c. Upon hearing and determination of this application, this Honourable Court be pleased to issue stay of execution of the ruling delivered on 6th February, 2026 by Hon. Rodgers Otieno in ELDORET SCCCOMM NO. E470



OF 2026 Chev Energies Limited-Versus-Robimart Energy Ltd Formerly Hazina Energies Ltd and Irene Chebet (Objector) pending the hearing and determination of the Appeal.

d. Costs be provided for.

2. The application is based on the following grounds:

- a. The Appellant/Applicant herein seeks leave of this Honourable Court to stay execution of the ruling delivered on 6th February, 2026 by Hon. Rodgers Otieno in ELDORET SCCCOMM NO. E470 OF 2026 CHEV Energies Limited-Versus-Robimart Energy Ltd Formerly Hazina Energies Ltd and Irene Chebet (Objector) pending the hearing and determination of this Application and appeal.
- b. That the Appellant/Applicant filed a claim dated 4th February 2025 against the 1st Respondent herein for a claim of Kshs.624, 346. 60.
- c. That by its own admission through a notice of motion application dated 20th March 2025, the 1st Respondent admitted the claim and requested for payment in installments.
- d. That the trial Court delivered a ruling on the 9th of May 2025 in which the 1st Respondent was allowed to settle the decretal amount in monthly installments of Kshs.100, 000 until payment in full.
- e. That the Court further ordered that in case of default in paying any of the installments, the Appellant/ Applicant was at liberty to execute.
- f. That the 1st Respondent defaulted and the Appellant/ Applicant extracted a decree dated 9th May 2025 and moved to instruct the firm of TIMPECH AUCTIONEERS to execute the decree against the 1st Respondent.
- g. That warrants of attachment and sale were issued on the 4th of September 2025.
- h. That the Appellant/Applicant's instructions and the warrants of attachment and sale were very clear on whose property was to be attached.
- i. That the Appellant/Applicant was shocked to be served with an application dated 4th December 2025 by the 2nd Respondent/ objector in which she claimed that the auctioneer had wrongfully attached her motor vehicle registration number KDC 912L, Toyota Dyna together with customers gas cylinders whereas the same did not belong to the 1st Respondent.
- j. That the Appellant/Applicant in its replying affidavit dated 31st December 2025 clearly stated that it never instructed the auctioneer to attach anything that did not belong to the judgment debtor.
- k. That the Appellant/Applicant further informed the Court that having not issued instructions to the auctioneer to attach third parties' goods, the auctioneer was a necessary party in the proceedings to shed light on how he proceeded to attach third parties' goods without express instructions from the Appellant/Applicant or the Court.



- l. That curiously, the 2nd Respondent/Objector never saw it fit to include the auctioneer despite being made aware that the Appellant/Applicant had never; issued instructions to the auctioneer to attach anything that did not belong to the 1st Respondent, seen the said motor vehicle and gas cylinders and never had custody of the attached goods.
 - m. That the Appellant/Applicant has not benefitted from the said attachment as it is yet to receive any monies from any sale if any.
 - n. That the trial Court proceeded to ignore the necessity of having the auctioneer in the said proceedings and through its impugned ruling dated 6th February 2026 issued orders against the Appellant/Applicant to unconditionally release motor vehicle registration number KDC 912L and the gas cylinders to the 2nd Respondent/objector.
 - o. That the Appellant/Applicant does not have the said motor vehicle or gas cylinders to release to the objector as the same were under the custody of the auctioneer who attached the same without instructions from the Appellant/Applicant.
 - p. The Appellant/Applicant is apprehensive that if the orders sought herein are not granted, it is likely to be greatly prejudiced as the objector could institute contempt proceedings against it.
 - q. That the Appellant/Applicant is further apprehensive that it doesn't not have anything to release to the objector as it is not the one that carried out the attachment.
 - r. That the auctioneer is an officer of the Court who should always act as per instructions and should not be allowed to undertake illegal attachments.
 - s. That the Appellant/Applicant's appeal has a high chance of success.
 - t. That If execution occurs before this Application has been heard and orders sought are granted, the Applicant stands to suffer irreparable loss and prejudice and the Appeal will be rendered nugatory hence the urgency of this Application.
 - u. That it is in the interest of justice that the orders south be granted.
 - v. That this application has been brought without undue delay and the Respondent will not suffer any prejudice if the orders sought are granted.
 - w. That it is in the interest of justice that the orders south be granted.
3. In response to the application the Respondent filed a replying affidavit dated 13th March 2026 vehemently opposing the issues raised in the application stating as follows:
- a. That I am a female adult of sound mind and the 2nd Respondent/Objector herein who is fully conversant with the facts of this matter hence competent to swear this Affidavit.



- b. That I swear this Affidavit in response to the Appellant/Applicant's Notice of Motion application dated 27th February, 2026 and the Supporting Affidavit sworn by Albert Makundi Muchai of an even date.
- c. That the said Application has been explained to me by my Advocate on record whose advice I believe to be true. Having understood its imports and intents, I therefore wish to respond to the same as hereunder;
- d. That from the onset, I wish to state that the said application is frivolous, incompetent, made in bad faith, unmerited, misconceived, misconstrued, annoying, an abuse of the Court process, frivolous and aimed at frustrating the 27d Respondent's execution process.
- e. That I moved the Honourable Court in ELDORET SCCCOMM No. E470 OF 2026-CHEV ENERGIES LIMITED VS ROBIMART ENERGY LTD (Formerly HAZINA ENERGIES LTD) as an Objector/Applicant vide an application dated 4th December, 2025 through the firm of Mwaka & Company Advocates seeking orders inter alia that;
 - "2. THAT there be temporary stay of sale and/or further execution of all the Objector/Applicant's Motor Vehicle Registration No. KDC 912L a Toyota Dyna together with customer's Gas cylinders pending the (inter-parties hearing and determination of this application.
 - 3. That the attachment/execution process be declared wrongful, illegal and/or null and void and the Claimant be condemned to pay their own costs. 4. THAT the Claimant be compelled to pay the Objector lost income from the hire of the wrongly attached motor vehicle at a rate of Kshs. 8,000/= per day from 8% day of October, 2025 till release of the same."
- f. That prior to that, I was not a party to that suit neither was I a Judgment Debtor.
- g. That the Appellant/Applicant through Timpech Auctioneers wrongfully, fraudulently, illegally and in total disregard to my constitutional right to own property attached my Motor Vehicle Registration No. KDC 912L, a Toyota Dyna together with my customers' gas cylinders.
- h. That I reiterate the advice given by my Advocates on record in the said matter which advice I still believe to be true that the purported Judgment Debtor/1st Respondent and myself are two different entities in law and as such, I do not have any obligation to pay its debts and or meet its liabilities as and when they accrue.
- i. That subsequently and upon hearing the parties, the trial Court made a determination declaring the execution by the Appellant/Applicant process illegal, null and void and ordered that the subject Motor Vehicle Registration No. KDC 912L be released to me unconditionally.



- j. That that I am informed by my Advocate on record, which information I believe to be true that pursuant to paragraph 9 to 19 of the Supporting Affidavit of Albert Makundi Muchai who is the Director of the Appellant/Applicant, he confirms and or admits that as the Decree holder, the Appellant/Applicant gave instructions to the auctioneers to execute the decree against the 1% Respondent but they ended up attaching the wrong motor vehicle. Two, that they have not received any monies of sale if any from the auctioneers and three that the motor vehicle together with the gas cylinders are not in their possession and as such, they have nothing to release to me as ordered by the trial Court.
- k. That I wish to state that in view of the above, the Appellant/Applicant has come to Court with unclean hands and is therefore undeserving of the orders sought.
- l. That it is laughable and legally impossible for an auctioneer acting under instructions to attach 'a wrong property' as there is an expectation on them to conduct a due diligence in the course of their duty before beginning the process of execution.
- m. That I have a constitutional right to own any property within the Republic of Kenya and which right should not be curtailed by any means whatsoever.
- n. That in the circumstances of this case, the acts and or omissions of the Appellant/Applicant amount to interfering and infringement of my proprietary rights and quiet enjoyment of my property which is the subject motor vehicle.
- o. That in view of the foregoing and in response to paragraph 20 of the Appellant/Applicant's Supporting Affidavit, it is clear that the Appellant/Applicant has not demonstrated that the appeal has any chance of success.
- p. That it is not true for the Appellant/Applicant to allege at paragraph 22 of their Supporting Affidavit that I will not suffer any prejudice in the event the orders sought are granted.
- q. That I wish to confirm that from the time the subject motor vehicle was wrongly attached and taken away from me, I have undergone psychological trauma and incurred immense losses including loss of income, legal fees and has exposed me to several claims from my customers.
- r. That I have been advised by my Advocates on record information which I believe to be true that in an application for stay as has been brought by the Applicant, one has to demonstrate that substantial loss may result to them as stipulated Under Order 42 Rule 6(2) of the Civil Procedure Rules. That in this case the Applicant has not demonstrated any ounce of loss that shall befall them meaning that they do not stand to suffer any either imaginable or real loss.
- s. That failure to satisfy this Honourable Court either by producing evidence is evidence enough and satisfactory that no real loss shall visit the Applicant and this should be ground enough to dismiss the Application.



- t. That in case of any losses that shall befall the Applicant if any which the same is hereby denied, the losses can adequately be compensated by an award of damages.
 - u. That the enjoyment of the Applicant's right to approach this appellate Court should not unnecessarily and unjustifiably hinder the 2nd Respondent's right to enjoy the fruits of the Ruling delivered in ELDORET SCCCOMM NO. E470 OF 2025.
 - v. That notably, the Appellant/Applicant has brought the Application under Section 1A and 1B of the *Civil Procedure Act* which calls for the just and efficient disposal of matters whereas the Applicant at the same time wants to delay the determination and or conclusion of this matter.
 - w. That further to that, the Application now before this Honourable Court offends the Overriding Objective of this Honourable Court which is to facilitate just, expeditious, proportionate and affordable resolution of disputes.
 - x. That I am further advised by my advocate on record which advice I verily believe to be true that in the event the application is allowed, it will set a very bad precedent.
 - y. That I swear this affidavit in strong opposition to the application now before this Honourable Court and pray that the same be dismissed with costs to myself.
4. The application was canvassed by way of written submissions. On the part of the Appellant learned Counsel placed reliance in the written submissions dated 20th March 2026. The substratum of it being the principles in the following authorities: *Abdi v Ahmed* (Civil Appeal E007 of 2024) [2024] KEHC 11514 (KLR), *Ndungu v Mutua* (Civil Appeal E047 of 2024) [2024] KEHC 6276 (KLR), *James Wangalwa & Another vs Agnes Naliaka Cheseto* [2012] eKLR. These principles remain to be the guiding yardstick for this Court to exercise judicial discretion to grant the remedy on stay of execution pending appeal as provided for under Order 42 Rule 6 of the Civil Procedure Rules. One of the hallmark condition on stay of execution is that of substantial loss or likelihood of prejudice on the part of the Applicant in the event stay is not granted in his/her favour.
5. On the part of the 2nd Respondent learned Counsel relied on the submissions dated 23rd March 2026 in which he contended as follows: First and foremost, this being an equitable remedy the Applicant/Appellant has not demonstrated that he has approached this Court with clean hands and therefore he is not deserving the discretion of the orders sought under Order 42 Rule 6 of the CPR. Hence the maxim to whoever comes to equity must come with clean hands. It is the contention of learned Counsel for the 2nd Respondent that the Director of the Appellant/Applicant in its supporting affidavit admits that as the Decree Holder in the Lower Court, the Applicant gave instructions to the Auctioneers to execute the decree against the 1st Respondent but that the Auctioneers ended up attaching the wrong motor vehicle which is the subject of this matter in this application. In the further submissions by the 2nd Respondent the subject motor vehicle is registered in her name bringing the rights to be enjoyed within the provisions of Article 40 of *the Constitution*. It is from this perspective learned Counsel for the 2nd Respondent invited the Court to rely on the well settled principles in the following case to decline grant of stay of execution as prayed for by the Appellant; *Kenya Shell Ltd vs Benjamin Karuga Kibiru & Anor in Nairobi Civil Appeal Civil Application No. 97 of 1986 and Palace Investments Ltd. v Geoffrey*



Kariuki Mwenda & Anor Nairobi Civil Appeal No. 127 of 2005. It is from the above submissions the 2nd Respondent submits that discretion by this Court should be declined for want of merit.

Decision

6. The High Court decisions on stay of execution pending appeal, focus on demonstrating substantial loss of execution if proceeds, a nugatory appeal if stay is denied, and showing a serious triable issue likely to succeed on appeal. This means that the Court must pre-judge the main appeal but must confirm a valid appeal if it is pending. The key principles under Order 42 Rule 6 of the CPR which has not been interpreted and construed in the various case laws always hinges in the following key principles: Substantial loss: The Applicant must show they will suffer loss that cannot be compensated by money if the appeal succeeds. Ready Security: Courts often require the Applicant to deposit security for the due performance of the decree. Timely Application: applications must be made without unreasonable delay. Maintain Status Quo: The primarily aim is to keep the subject matter of the dispute intact until the appellate Court makes a decision
7. There isn't much controversy on whether the application was not filed within the timeline set by the law. Therefore, the element of unreasonable delay is not gist of this motion. I would for purposes of this application discuss a little more on what constitute substantial loss. This doctrine was sufficiently explained by the Court in the case of James Wangalwa & Another v Agnes Naliaka Cheseto [2012] eKLR:

“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...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. In the persuasive case of Pan Africa Pan African Insurance Co. Ltd vs International Air Transport Association HCMA No. 86 of 2006, it was held that;

The deponent must go a step further to lay the basis upon which Court can make a finding that the Applicant will suffer substantial loss. That it should go beyond the vague and general assertions of substantial loss in case the order of stay is refused. Similarly, in the case of Tropical Commodities Suppliers Ltd and Others vs International Credit Bank Ltd (In Liquidation) [2004] 2 EA 331 the Court noted that substantial loss does not represent any particular amount or size, it cannot be quantified by any particular mathematical formula. It refers to any loss, great or small, that is of real worth or value, as distinguished from a loss without a value or a loss that is merely nominal.
9. An appeal connotes a rehearing of a matter by higher Court than the one which determined the dispute. In our legal system therefore once judgment is pronounced and signed by the Court it cannot afterwards be altered or reviewed unless under Section 80 of the CPA and Order 45 Rule 1 of the CPR. The very same Court which pronounced it becomes functus officio. The remedy for an aggrieved party who is dissatisfied with such a judgment or any part of it is to appeal to a higher Court.



10. In cases of this nature, it is incumbent upon the Applicant/intended Appellant to properly articulate his/her case to demonstrate that he/she has an arguable case on appeal. This is done through filing of affidavits and other documentary material including the memorandum of appeal.
11. In the final analysis of this motion the Applicant meets all the legal threshold for grant of stay of execution pending appeal. As a consequence, the execution of a decree in Eldoret SCCOMM No. E470 of 2026 Chev Energies Ltd. v Robimart Energy Ltd. Formerly Hazina Energies Ltd. and Irene Chebet (Objector) be and is hereby stayed pending the hearing and determination of the Civil Appeal No. E033 of 2026. The costs of this application shall abide the result of the appeal.

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

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R. NYAKUNDI

JUDGE

