



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYANDARUA**

**HIGH COURT CIVIL CASE NO. 2 OF 2023**

**ANTHONY MAINA HENIA.....1<sup>ST</sup> PLAINTIFF/RESPONDENT**

**CIGMA BUSINESS CENTRE LTD.....2<sup>ND</sup> PLAINTIFF/RESPONDENT**

**HORIZON DRILLING CO. LTD.....3<sup>RD</sup> PLAINTIFF/RESPONDENT**

**JAMES KABUGI KIMANI.....4<sup>TH</sup> PLAINTIFF/RESPONDENT**

**JACINTA WANJIRU MACHARIA..... 5<sup>TH</sup> PLAINTIFF/RESPONDENT**

**VERSUS**

**SOUTHSHORES LOGISTICS LTD.....1<sup>ST</sup> DEFENDANT/APPLICANT**

**COSTIN & WEBSTER LAW.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. The 1<sup>st</sup> defendant/applicant moved the court by way of a Notice of motion dated the 17<sup>th</sup> day of February 2026. It was brought under Order 42 Rule 6 of the Civil Procedure Rules and Article 159 (2) of the Constitution of Kenya. The applicant is seeking an order for a stay of execution for the judgment of this court, which was delivered on the 12<sup>th</sup> day of February 2026.
2. The application was premised on the following grounds:
  - a) The honourable court delivered a judgment on the 12<sup>th</sup> February, 2026 and allowed the plaintiffs' claim.
  - b) The honourable court ordered that the applicant herein pay the plaintiffs a huge amount of money in excess of Kshs: 50,000,000/= plus interest at 12%.
  - c) The applicant is aggrieved by the judgment herein and wishes to appeal against the whole of the said judgment to the Court of Appeal and has already filed a notice of appeal dated the 17<sup>th</sup> February, 2026.
  - d) The intended appeal is arguable and has a reasonable probability of success;
  - e) The intended appeal shall be rendered nugatory should execution ensue before the appeal is heard.

- f) The applicant stands to suffer irreparable loss, and damages should execution ensue before the appeal is heard, because it is not able to raise the amount awarded to the plaintiffs herein.
  - g) The applicant sold parcels of land to the plaintiffs, who took possession and are still in possession of the said parcel of land, and this honourable court did not order them to vacate the parcels of land.
  - h) The applicant has thus lost its land and is now being asked to pay back the plaintiffs the purchase price plus interest at 12%.
  - i) This honourable court deals with a dispute concerning land without jurisdiction and thus the applicant has an arguable appeal with a high chance of success,
  - j) The application herein has been made without any undue delays.
  - k) This honourable court has inherent jurisdiction to issue the orders prayed for,
  - l) It is in the interest of natural justice and fair hearing that the application herein be allowed.
3. The respondents opposed the application on the following grounds:
- a) That no Notice of Appeal has been filed.
  - b) That the applicant did not demonstrate any substantial loss that may be occasioned by the failure to grant the orders sought; and
  - c) That no security for due performance has been offered.
4. It is well-established law that an appeal does not automatically stay execution. Order 42 Rule 6 of the Civil Procedure Rules states clearly:

***(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.***

5. In the case of **RWW vs EKW [2019] eKLR**, the court, while addressing its mind to the purpose of a stay of execution order pending appeal, stated:

***The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded, and the appeal, if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be***

*deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.*

6. The respondents argue that no Notice of Appeal has been submitted. However, the applicant has not provided any document to prove that such a Notice was filed. This omission would make the application invalid. I will, however, give the applicant the benefit of the doubt in case he may have forgotten to serve the notice on the respondents.
7. To have the court consider a stay of execution for a monetary decree, the applicant must provide security. In this case, the applicant did not submit any proposal. In the interest of justice, I will grant a stay of execution until the appeal is decided, on the condition that the applicant deposits the decretal amount into a joint interest-earning account in the names of the respondents' advocate and his own within 45 days of this decision. If the applicant fails to do so, the respondents may proceed with execution.
8. Costs will abide with the outcome of the appeal.

**Delivered and signed at Nyandarua, this 5<sup>th</sup> day of May 2026**

**KIARIE WAWERU KIARIE**

**JUDGE.**