

**IN THE COURT OF APPEAL
AT NAKURU**

[CORAM: MATIVO, MURUNGI & HASSAN, JJ.A)

CIVIL APPLICATION NO. E034 OF 2026

BETWEEN

**NJERU WA WANG'OMBE1st
APPLICANT MARTIN MWANIKI WANG'OMBE
.....2nd APPLICANT AND
CREDIT BANK.....1st
RESPONDENT SALVAGE SERVICES [2006] LTD.....
.....2nd RESPONDENT PETER MAINA
WANG'OMBE.....3rd RESPONDENT CAROLINE
NANJALA OUNDO.....4th RESPONDENT**

(An application for stay of execution pending hearing and determination of the appeal from the judgement and decree of the High Court of Kenya at Nakuru (J. M. Nang'ea J.) delivered on 11th February, 2026

in

***High Court
[Commercial] Civil Case
No. E003 of 2024***

RULING OF THE COURT

1. Before us for determination is the Applicants Notice of Motion application dated 3rd March, 2026 under **Rule 5[2] b** of the Court of Appeal Rules in which they seek stay of execution of the judgment, the decree and all consequential orders pending the hearing and

determination of an appeal against

the decision made on 11th February, 2026 by the Hon. J. M. Nangea J. in Nakuru HCCC No. E003 of 2024.

2. The applicants were the plaintiffs in the main suit in which they challenged the charge created over Title Number. Nakuru/Municipality Block 15/73 in favor of Credit Bank to secure credit facilities advanced to Salvage Services [2006] a company owned by the applicants siblings on grounds that the security was irregularly and unlawfully created after the death of the late Agnes Nyagacheke registered owner and was as a consequence null and void and the money advanced on the security thereof was irrecoverable.
3. Credit Bank filed a defence in which it denied the claim and counterclaimed for damages for fraud. After the trial the judge rendered the judgement and decree appealed against. He allowed the bulk of the appellants' claim by granting the two principal prayers for permanent and mandatory injunctions sought by the applicants against Credit Bank.
4. In addition, the trial court condemned applicants to pay costs of the main suit, awarded an aggregate of ksh 2000,000 in general and exemplary damages and costs

awarded against them in the counterclaim for
perpetuating

a fraud against Credit Bank the 1st respondent thus precipitating the appeal and the application for stay of execution.

5. The application is based on the grounds set out in the body of the motion and supported by the affidavit of Njeru Wa Wangombe sworn on 3rd March 2026. Briefly stated, the applicants are dissatisfied with the judgment of the superior court in which they allege that some orders are enforceable within two weeks, they have filed a notice of appeal and memorandum of appeal which disclose serious grounds of law deserving a merit hearing, the appeal has high chances of success.
6. They aver that the trial court fell into error when it issued a judgement in their favor but went on to condemn them to pay costs in both the main suit and the counterclaim which they contend is unusual. They complain that the orders requiring them to pay costs in the main suit will curtail their constitutional right of access to justice at an affordable cost. They assert that they have been burdened with what they characterize as double jeopardy rendering their success worthless as they cannot raise the security that may be

imposed and pray that this Court spares them from an order for costs by granting the orders sought in the application.

7. The application is opposed by the Credit Bank the 1st respondent through the affidavit sworn on 9th March, 2026 by Wainaina Francis Ngaruiya, its Head of the Legal Department on grounds that the applicants fail to succinctly state which orders they are dissatisfied with and neither do they identify the orders to be effected within two weeks of delivery of judgment. He avers that this failure to succinctly state the orders the applicants are dissatisfied with points to disingenuity on their part because they were successful in respect of the orders required to be complied within two weeks. Those orders are directed against the 1st respondent and require discharge of the title of the subject property. Further, some of the prayers proposed to be sought by the applicants in the memorandum of appeal such as grant of permanent injunction and discharge of the property have already been granted by the trial court, the only prayer that they are aggrieved by is only the prayer requiring them to pay costs to the 1st respondent. Those costs can

be ascertained and refunded should the appeal succeed,
thus no prejudice

will be occasioned to the applicants if the application for stay is dismissed.

8. We heard the application on 22nd April 2026 when Mr. Omwenyo for applicants and Ms. Maitai for 1st respondent briefly highlighted their rival written submissions while Mr. Njoroge holding brief for Mr. Mwangi for the 2nd, 3rd and 4th respondents did not oppose the application.
9. Mr. Omwenyo submitted that the applicants' grievance is that they were condemned to pay costs of both the main suit and the counterclaim notwithstanding that they won the main case. He reckoned that whether the trial court exercised its discretion in awarding costs against the applicants is an arguable point and urged us to allow the application.
10. On her part, Ms. Maitai argued that the application is not merited, the applicants have no arguable appeal which will be rendered nugatory absent an order of stay being granted by the court and the grant of an order of stay will deny and delay the 1st respondent of the fruits of the judgment of the court. She added that the applicants have not alleged that the 1st respondent will be unable to refund any costs that may be taxed and paid before the

hearing and determination

of the intended appeal and urged us to dismiss the application with costs.

- 11.** We have considered the rival contentions of the parties in support and opposition to the application and the principles that govern the exercise of this Court's jurisdiction when considering an application for stay of execution under **Rule 5[2] b** of the Court of Appeal Rules as elaborately and routinely set out in various decisions of this Court. Those principles are well settled. The jurisdiction of the Court is original and discretionary in nature. The scope of the discretion is wide and unfettered. But must like all judicial discretion be exercised judiciously. To benefit from the Court's favorable exercise of that discretion the applicant must sequentially surmount the twin barrier of demonstrating that; first that the appeal or intended appeal is arguable meaning that it is not frivolous or trifling but not one that must ultimately succeed and secondly that the appeal will otherwise be rendered nugatory unless the order sought is granted. [See the case of **Stanley Kang'ethe Kinyanjui vs. Tony Ketter & 5 Others** [2013] eKLR.

12. Upon a careful consideration of the proposed grounds of appeal, we are not persuaded that the applicants have demonstrated that they have an arguable appeal. Since it is a requirement that an applicant must satisfy the twin principles, having failed to satisfy the first prerequisite, it will add no value for us to discuss the nugatory aspect.
13. In the end, we come to the conclusion that the application dated 3rd March 2026 has no merits and is hereby dismissed with costs to the 1st respondent.

Dated and delivered at Nakuru this 15th day of May, 2026.

J. MATIVO

.....
JUDGE OF APPEAL

MURUNGI B. KAIRARIA

.....
JUDGE OF APPEAL

AHMED ISSACK

.....
... JUDGE OF APPEAL

*I certify that this is
a True copy of the
original*

Signed

DEPUTY REGISTRAR