



REPUBLIC OF KENYA



Kumar t/a Nirmal Baba Enterprises v Stanbic Bank Kenya Limited (Civil Appeal E001 of 2026) [2026] KEHC 5851 (KLR) (4 May 2026) (Ruling)

Neutral citation: [2026] KEHC 5851 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL E001 OF 2026
RN NYAKUNDI, J
MAY 4, 2026**

BETWEEN

SUDHIR KUMAR T/A NIRMAL BABA ENTERPRISES APPELLANT

AND

STANBIC BANK KENYA LIMITED RESPONDENT

RULING

1. Before this Court is a notice of motion dated 13th January 2026, brought under Orders 22 Rules 22 & 25, 42 Rule 6 or the Civil Procedure Rules and Section 3A of the *Civil Procedure Act*, Cap 21 and all the enabling provisions of the law. The Applicant seeks the following orders:
 - a. Spent.
 - b. Spent.
 - c. That there be temporary stay of execution of the judgement delivered on 16/12/2025 and the resultant decree in Eldoret MCCC/ E156/2024 by Hon D.S.Sifuma (SRM) pending hearing and determination of the appeal herein.
 - d. That the Respondent and or their authorized agents be restrained by way of an injunction from attaching, offering for sale, selling by public auction or private treaty Motor Vehicle registration NO. KDM 124V Sino Truck Prime Mover pending the hearing and determination of this application interparties and thereafter the appeal herein.
 - e. That necessary directions be given.
2. The Application is made on the following grounds that: -
 - a. The Applicant being aggrieved by the judgment of Hon. D. S .Sifuma (SRM) has preferred an appeal against the whole judgement.



- b. The Applicant stands to suffer substantially during the pendency of the appeal as the Respondent is in the process of executing the judgement and decree herein and may proceed to attach and sale the Applicant's Motor Vehicle Registration No. KDM 124V Sino Truck Prime Mover that was used as security.
 - c. The appeal filed herein by the Appellant has high chances of success hence the need for the order of stay of execution.
 - d. The Respondent will not be prejudiced in any way if the orders herein are granted.
 - e. This application has been made without undue delay.
3. In response to the application the Respondent filed Grounds of Opposition dated on 16th day of February 2026 vehemently opposing the issues raised in the application stating as follows:
- a. That The Application is incompetent, frivolous, vexatious and an abuse of the Court process. It is premature, as no decree has been extracted and no execution proceedings have been commenced. The Appellant has annexed neither a decree nor any application for execution. The allegation that the Respondent has “sent auctioneers to attach” the motor vehicle is unsubstantiated and intended to mislead the Court.
 - b. That the Appellant has failed to satisfy the mandatory conditions for stay of execution pending appeal under Order 42 Rule 6(2) of the Civil Procedure Rules, namely:
 - a. No substantial loss will result. The subject motor vehicle (KDM 124V Sino Truck Prime Mover) is a commercial asset whose market value is readily ascertainable. Any loss is fully compensable by an award of damages if the appeal succeeds.
 - b. No security has been offered for due performance of the decree. The decretal sum is KES 6,706,042. The Appellant ought to deposit the entire sum in a joint interest-bearing account in the names of the advocates for both parties as a condition precedent to any stay.
 - c. That The Appellant has equally failed to meet the threshold for an interlocutory injunction as laid down in *Giella v Cassman Brown*:
 - a. No prima facie case with probability of success exists. The grounds in the Memorandum of Appeal are unmeritorious: The Appellant admitted in cross-examination that he was not servicing the loan as determined by the trial Court at paragraph 11 of its Judgement; the allegations of being “rushed into signing” the loan forms, non-service of default notices, and illegal imposition of interest were never pleaded or raised in the trial Court and cannot be introduced for the first time on appeal.
 - b. No irreparable injury: the motor vehicle is a commercial asset of ascertainable value and any loss is compensable by damages.
 - c. Balance of convenience tilts decisively in favour of the Respondent. The Respondent is a commercial bank holding public depositors’ funds. If borrowers’ default and banks are restrained from recovery, the public ultimately bears the loss. The rights of the public must not be sacrificed for an individual borrower. See the Court of appeal in *Bank of Africa Ltd vs Juja*



Coffee Exporters Ltd “a bank has no money of its own and it is axiomatic that it uses public funds to trade with”.

- d. That in view of the foregoing, the Appellant’s Notice of Motion Application dated 13th January 2026 is devoid of merit and ought to be dismissed with costs to the Respondent.

4. This application was canvassed by way of written submissions. With regard to the Appellant/Applicant learned Counsel Mr. Kesse argued and submitted there exist substantial and exceptional circumstances in which has led this Court to be moved for grant of stay of execution against the judgment delivered on 16th December 2025 by the trial Court presided over by Hon. Sifuma. The bone of contention by learned Counsel as between the Applicant/Appellant and the Respondent bank is the attachment and offering for sale by public auction or private treaty of motor vehicle registration No. KDM 124V Sino Truck Prime Mover hence the necessity of injunction or stay of execution pending the intended appeal. It was learned Counsel’s argument and submission that the Court placing reliance on the following case laws should grant stay of execution pending the hearing and determination of the appeal: *Shaneebal Limited v County Government of Machakos* [2018] eKLR and *Gichinga Kibutha v Caroline Nduku* [2018] eKLR. In context the Applicant/Appellant is contesting the findings of the trial Court in so far as the loan agreement interpretation is concerned involving the principal sum advanced for the purchase of the motor vehicle KDM 124V for Kshs. 5,842,835/= and the monthly installment made totaling 3,700,000/= but still the demand notice stands at Kshs. 5,842,835/= meaning that no installment has been acknowledged by the Respondent bank. The 2nd limb of this contestation is with regard to the dismissal of his claim but the Court went ahead to pronounce judgment on the counter claim by the Respondent bank. Learned Counsel therefore submitted that the Applicant/Appellant stands to suffer substantial loss in the event no stay of execution is granted by this Court so that he can pursue the appeal.
5. This trajectory and line of submissions was strongly opposed by the Respondents learned Counsel Mr. Igeria. It was learned Counsel arguments on the behalf of the Respondent that the application for stay of execution under Order 42 Rule 6 of the CPR had not ripened from the decree and certificate of costs is yet to be drawn and satisfied by the registry of the trial Court. Therefore, according to the learned Counsel for the Respondent this far cry by the Applicant intended Appellant seeking stay of execution is unmerited. Learned Counsel further contended that the settle principles in the following cases places a higher hurdle to be sub mounted by the Applicant/Appellant which from his affidavit evidence he fails miserably, see the guiding principles: *Kisumu Civil Appeal E144 of 2023: Kenya Power & Lighting Company Limited vs Scolia Company Limited, James Wangalwa & Another v Agnes Naliaka Cheseto* (2012), In *Milimani Commercial Appeal E040 of 2024: Grace Njeri Thuo vs Momentum Credit Limited*, In *Milimani HCCOMM 422 of 2006: Antoine Ndiaye vs African Virtual University*, *ELC Appeal E025 of 2023: George Omondi Nyakech vs Francis Ogola Ayoo & 2 Ors and Bank of Africa Kenya Limited v Juja Coffee Exporters Limited & 4 others* [2018] eKLR. According to learned Counsel there is no reasonable cause of action on appeal based on the impugned judgement and the loan agreement in which this Court can exercise discretion to grant stay of execution pending appeal.
6. Given the above legal contestation against the trial court judgment I have to decide the motion by the Applicant on the basis of the well known two principles namely whether the Applicant has an arguable appeal and whether if we refuse to grant him the order for stay which he seeks and his appeal were to eventually succeed, that success would have been rendered nugatory.
7. For those reasons I find there are triable issues on appeal notwithstanding whether they would succeed or not on the merits of that appeal. In the result stay of execution of the trial Court judgment be and is hereby issued on condition that the Appellant do deposit the decretal sum of Kshs. 700,000 in the



interest earning account of both Counsels in the reputable financial institution within 30 days from today's ruling and or in the alternative have the same quantum deposited with the Deputy Registrar of the High Court within the same period to pave way for the appeal process to take effect.

In this respect the Deputy Registrar of the High Court shall be moved with speed to expedite the preparation of the manual record to be shared with both Counsels so that the Appellant can file the record of appeal appropriately. The order on costs of this application to 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

