

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT VOI

CIVIL APPEAL NO. E015 OF 2025

DANSON **MWANDOTO.....**

APPELLANT

=VERSUS=

KENNEDY **WAMBUA** **WAMARIA.....**

RESPONDENT

RULING

1. The application coming for consideration in this Ruling is the one dated 13th November 2025 brought under Sections 1A, 1B of the Civil Procedure Act, Order 42 Rule 6(2), Order 43 Rules and Order 51 Rule 1 of the Civil Procedure Rules 2010 and all enabling provisions of the law seeking the following orders:-

- (i) THAT this application be certified as urgent and be heard Exparte in the first instance.**
- (ii) THAT this Honourable Court be pleased to issue a temporary stay of execution of the Judgment herein on 15th October 2025 together with all consequential orders pending the inter partes hearing and determination of this application.**
- (iii) THAT this Honourable Court be pleased to issue an order of stay of execution of the Judgment delivered**

herein on 15th October 2025 together with all consequential orders pending the hearing and determination of the appeal by the applicant in the Court of Appeal.

(iv) THAT this Honourable Court be pleased to make any other or such further orders as meets the ends of justice in this case.

(v) THAT the costs of this application be in the cause.

2. The application is based on the grounds on the face of it and supported by the affidavit of the Applicant in which he deposed as follows:-

(i) THAT the deponent is the Applicant herein and is well conversant with this matter, and therefore competent to swear this Affidavit.

(ii) THAT the deponent is aware that judgment was delivered on 15th October 2025 on an appeal preferred by the Appellant/Respondent herein from the decision of Hon. D. Wangeci (PM) on the dismissal of the Appellant/Respondent's suit in the trial court.

(iii) THAT this Honourable Court overturned the decision of the lower court on liability and made an award of quantum as would have been awarded in the trial court if the Appellant/Respondent had been successful on liability.

- (iv) THAT the deponent is dissatisfied with the said judgment delivered on 15th October 2025 and has since lodged an appeal in the Court of Appeal against the said decision.
- (v) THAT it is in the best interest of justice that this application be allowed to accord the deponent an opportunity to exercise his right of appeal and prosecute his appeal in the Court of Appeal, which appeal has high chances of success.
- (vi) THAT without the orders for stay pending appeal, the deponent's appeal will be rendered nugatory should the Respondent proceed to execute the judgment which is quite a substantial amount; the deponent will suffer loss and damage that cannot be compensated by an award of damages.
- (vii) THAT the Appellant's means are unknown to the deponent and from the way the Appellant never finished paying the costs awarded to the deponent in the lower court of Kshs. 119,000/= after execution and being granted an opportunity to pay in instalments, it is highly doubtful that the Appellant will be able to refund the decretal sum if the deponent's appeal succeeds.
- (viii) THAT the instant application has been filed without unreasonable delay.

(ix) THAT the Respondent will not suffer any prejudice should the orders sought be granted because in the event the deponent's appeal fails, the deponent will still pay him the owed amount

3. The parties filed written submissions as follows; The applicant/respondent did not file any submissions.
4. The appellant submitted arguments in opposition to the respondent's Notice of Motion dated November 13, 2025.
5. The appellant contends that the applicant has failed to meet the mandatory conditions for a stay of execution pending appeal as required under Order 42 Rule 6 of the Civil Procedure Rules.
6. The appellant further submitted that the applicant incorrectly based their submissions on Rule 5(b) of the Court of Appeal Rules, which are not applicable in this High Court proceeding.
7. Referring to case law, the appellant emphasizes that for a stay to be granted, an applicant must establish sufficient cause, demonstrate that substantial loss would result from a refusal, and, must furnish security for the due performance of the decree.
8. While the appellant acknowledges that the applicant may have filed the application in a timely manner and attempted to show potential loss, they highlight a significant failure regarding the provision of security.

9. The appellant opposed the applicant's claim that providing security would be too burdensome, asserting that such requirements are a matter of law rather than at the discretion of the parties.

10. Finally, the appellant asked the court to dismiss the application, and argued that if a stay is granted, it must be conditional upon the applicant depositing the full decretal amount plus costs as security and restituting any sums already paid by the appellant with interest.

11. The issues for determination in this application are as follows;

(i) Whether the applicant has established "sufficient cause" to warrant a stay of execution,

(ii) Whether the applicant has demonstrated that substantial loss would result if the stay is not granted, and

(iii) Whether the applicant has offered or is willing to provide security for the due performance of the decree as mandated by law.

12. The principles governing stay of execution pending appeal are anchored in Order 42 Rule 6 of the Civil Procedure Rules.

13. A stay of execution is a matter of judicial discretion, but that discretion must be exercised upon the applicant satisfying three cumulative conditions as follows;

- (i) The application must be made without unreasonable delay,
- (ii) The applicant must demonstrate that substantial loss may otherwise ensue, and
- (iii) Such security as the court orders for the performance of the decree must be given.

14. In this case, while the applicant filed the application timeously and expressed concern over the respondent's ability to refund the decretal sum, there is a distinct failure to propose or furnish security.

15. The purpose of security is to balance the interests of both the appellant and the successful respondent, ensuring that the fruit of the judgment is not lost.

16. The applicant's contention that the requirement of security is burdensome does not override the statutory mandate.

17. Therefore, while the court recognizes the applicant's right to appeal, the decree-holder cannot be kept away from the enjoyment of their judgment without protection.

18. Accordingly, the application for stay of execution is granted, but it is conditional upon the applicant depositing half the

decretal sum into a joint interest-earning account in the names of both counsels or in court within 60 days of this ruling.

19. In default, the stay shall stand vacated and the appellant/respondent shall be at liberty to proceed with execution.

20. Costs shall be in the cause.

Dated, signed and delivered this 12th day of May, 2026 virtually at Voi High Court.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Mabishi/Millicent

Mrs. Isika for the Appellant

Mr. Kioko for the Respondent