



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mala v Sumba & another (Civil Appeal E039 of 2025)  
[2026] KEHC 6059 (KLR) (7 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 6059 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CIVIL APPEAL E039 OF 2025**

**DK KEMEL, J**

**MAY 7, 2026**

**BETWEEN**

**FREDRICK OMONDI MALA ..... APPLICANT**

**AND**

**NICHOLAS ODERA SUMBA ..... 1<sup>ST</sup> RESPONDENT**

**LAND REGISTRAR, MR YEGON SIAYA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicant has filed an application dated 2/3/2026 seeking the following reliefs:

1. That this Honourable Court be pleased to stay the execution of the Decree dated the 1st March, 2026 that has been issued in respect of the judgement entered herein on 20th February 2026 and any other order that may be issued pursuant thereto, pending appeal.
2. That the costs of this application be provided for.

2 The application is supported by the grounds set out thereunder and by the supporting affidavit of the applicant sworn on even date. The applicant's gravamen is inter alia that: the Applicant herein was served with an order on 1st March, 2026 days after the Appeal period has not elapsed and that the 1<sup>st</sup> Respondent is on the verge of effecting the decree dated the 20th Feb. 2026 hence compelling the Applicant to ask for stay of execution to avoid more cost and damages to the Applicant; that this honorable court should issue an order of stay of execution prohibiting the 1st and 2nd Respondents from dealing in the case or any other matter concerning the same until the Appeal is heard and determined or any other court review; that the Applicant has an arguable appeal with a high probability of success; that if the said stay of execution is not granted the Applicant's appeal will be rendered nugatory and the applicant will suffer irreparable damage and hence any other party or the affiliate company can file for costs and bring more damage to the Applicant; that substantial loss will result to the applicant



unless the orders sought are granted; this application has been made without unreasonable delay; that the application ought to be granted in the interests of equity and justice.

3. The application was opposed by the 1<sup>st</sup> Respondent who filed grounds of opposition dated 4/3/2026 wherein he raised objections inter alia: that the said application is misconceived and cannot lie as the high court is the final appellate court on matters emanating from the small claims court as stipulated under the provisions of section 38 (1) and (2) of the *Small Claims Court Act* 2016; that by virtue of the said provisions of section 38 (1) and (2) of the *Small Claims Court Act* no appeal can be preferred to the Court of Appeal, a final judgment having been rendered by this Honourable court in this matter on 20th February 2026; that the application filed herein has no footing and/or foundation to stand on and should be struck out with costs.
4. The application was canvassed via written submissions. Both parties duly complied.
5. The Applicant submitted that he has filed an appeal against the High Court judgment and therefore the Court should grant a stay of execution to stop implementation of the decision. It was contended that in law, a party who seeks their rights is entitled to a hearing and relief, and it is improper to enforce a judgment that is under appeal and pending review. It was submitted that a review is warranted where a judgment is not in line with the law and the Judge failed to consider constitutional provisions, citing Articles 157 and 158 of *the Constitution* of Kenya. It was the Applicant's view that the Court of Appeal should issue stay orders against the High Court's decision while he awaits the hearing and final determination of his appeal.
3. Mr Sumba who is the 1<sup>st</sup> Respondent submitted that the Applicant's application for stay is misconceived because under Section 38(1) and (2) of the *Small Claims Court Act* 2016, the High Court is the final appellate court for matters originating from the Small Claims Court. It was contended that since the High Court already rendered a final judgment on 20th February 2026, no further appeal lies to the Court of Appeal and therefore an application for stay pending appeal has no legal basis. It was also submitted that the High Court judgment of 20th February 2026 dismissed the Applicant's suit, which is a negative order with no decree capable of execution, meaning there is nothing to stay. It was finally submitted that the application lacks foundation and should be struck out with costs to the Respondent.
7. I have considered the application and the rival submissions. It is not in dispute that the parties herein had litigated their appeal herein and which was determined on the 20/2/2026. It is also not in dispute that upon the appeal determination, the Applicant filed a notice of appeal to the Court of Appeal. It is also not in dispute that the Applicant has filed a similar application for stay of execution in the Court of Appeal and which is now pending directions. It is also not in dispute that the Applicant's initial claim had been instituted before the Small Claims Court and which provide under section 38 thereof that the High Court is the final court of appeal. The issue for determination is whether the application has merit.
8. It is not in dispute that the parties herein had litigated their appeal herein and which was determined on the 20/2/2026. It is also not in dispute that upon the appeal determination, the Applicant filed a notice of appeal to the Court of Appeal. It is also not in dispute that the Applicant has filed a similar application for stay of execution in the Court of Appeal and which is now pending directions. It is also not in dispute that the Applicant's initial claim had been instituted before the Small Claims Court and which provide under section 38 thereof that the High Court is the final appellate court. It would therefore appear that the Applicant's application for stay is misconceived because under Section 38(1)



and (2) of the Small Claims Court Act 2016, the High Court is the final appellate court for matters originating from the Small Claims Court.

The judgment delivered by this Honourable court having emanated from a small claims court, this Honourable court is the last port of call by virtue of the provisions of section 38 (1) and (2) of the Small Claims Court Act 2016. The said provisions provides as follows: -

“

“(1) A person aggrieved by the decision or an order of the Court may appeal against that decision or order to the High Court on matters of law.

(2) An appeal from any decision or order referred to in subsection (1) shall be final.”

From the foregoing provision, it is therefore clear that no appeal can lie from this Honourable court to the Court of Appeal in the matter. That being the position, no application for stay of execution pending appeal is be available to the Applicant. As the High Court has already rendered a final judgment on 20th February 2026, no further appeal lies to the Court of Appeal.

9. Even though the Applicant is seeking an order for stay of execution pending the appeal in the Court of Appeal, it is noted that the High Court judgment of 20th February 2026 dismissed the Applicant's suit, which is a negative order with no decree capable of execution, implying that there is nothing to stay. Further, the Applicant has confirmed that he has already filed a similar application before the Court of Appeal which is pending directions. This therefore shows that the Applicant is playing lottery with the courts which should not be countenanced. I find that the Applicant is literally abusing the court process.
10. In view of the foregoing observations, it is my finding that the Applicant's application dated 2/3/2026 lacks merit. The same is dismissed with no order as to costs.

**DATED AND DELIVERED AT SIAYA, THIS 7<sup>TH</sup> DAY OF MAY 2026**

**D.KEMEI**

**JUDGE**

In the presence of:

N/A Fredrick Mala.....Applicant

Nicholas Odera Sumba..... 1<sup>st</sup> Respondent

N/A.....for 2<sup>nd</sup> Respondent

M/s Mourine.....Court Assistant

