

- c) THAT this Honourable Court be pleased to issue orders of stay of execution of the orders issued on 16th April 2026 by Hon. P Areri in Eldoret CMCC Case No. E512 OF 2025. Pravan Vijaykumar Saviani va Hardware and Homeware Suppliers vs Hiren Jagantilal Nagaria & Asha Industries Limited together with all consequential orders pending the hearing and determination of the main appeal.
- d) THAT Costs of the Application be provided for.
- 2.** The Application is premised on the grounds on the face of it and is further supported by the affidavit sworn by **HIREN JAGANTILAL NAGARIA** dated 16th April 2026.
- 3.** Hiren depones that the Chief Magistrate Court sitting in Eldoret issued orders on 16th April 2026 allowing the Plaintiff's application dated 23rd of March 2026 in Eldoret CMCC Case No E512 OF 2025, in disregard of the Appellants counsels' submissions that she had not been served with the said applications That the Applicant/appellants being aggrieved by the said orders have since appealed the same.

- 4.** That the Respondent might start the process of execution anytime from now as the orders had the effect of entering judgement on admissions against the appellants yet the applicants have never admitted to the claim.
- 5.** He avers that Applicant/Appellants have an arguable appeal with high chances of success as they do not owe the respondent any money.
- 6.** It is his case that the Applicant /appellants were not granted an opportunity to be heard before the trial court before the orders were issued yet they do not owe the respondent any money and they are strangers to the documents that were relied on by the respondent.
- 7.** That the Applicant/Appellants would suffer irreparable loss if the orders sought are not granted and that the Applicants/appellants were willing to furnish security as the court may direct.
- 8.** Despite evidence of service, there was no response to the application.
- 9.** I have considered the application, the affidavits on record and the submissions of counsel. The issue falling for

determination is whether the Applicant has satisfied the conditions for grant of stay of execution pending appeal.

10. The applicable principles are set out under **Order 42 Rule 6(2) of the Civil Procedure Rules** which provides that:

“No order for stay of execution shall be made under subrule (1) unless—
(a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

11. The principles governing stay of execution pending appeal are now well settled. In **Butt v Rent Restriction Tribunal [1979] KLR** the Court held that the power of the Court to grant or refuse stay is discretionary and

ought to be exercised in such a manner as not to prevent an appeal.

- 12.** Similarly, in **Kenya Shell Ltd v Kibiru & Another [1986] KLR** the Court emphasized that substantial loss is the cornerstone of an application for stay. The Court stated that if there is no evidence of substantial loss, it would be difficult to justify granting stay.
- 13.** In monetary decrees, the Court is often concerned with whether the decretal sum, once paid out, would be recoverable in the event the appeal succeeds. In **National Industrial Credit Bank Ltd v Aquinas Francis Wasike & Another [2015] JELR 98535**, the Court of Appeal held that once an applicant expresses reasonable apprehension that the respondent may be unable to refund the decretal sum, the evidential burden shifts to the respondent to demonstrate financial means.
- 14.** The first consideration is whether the application was brought without unreasonable delay. Judgment was delivered on 16/4/26 while the present application was

filed soon thereafter. In the circumstances, I am satisfied that the application was filed timeously.

15. The second consideration is whether substantial loss has been demonstrated. The decree herein is monetary in nature. The amount involved is colossal. There is no evidence that the Respondent will be in a financial position to refund the decretal amount if the appeal succeeds.

16. While it is true that a successful litigant ought not to be deprived of the fruits of judgment, the Court must balance that right against the equally important right of appeal. In the present case, I am persuaded that if execution proceeds and the decretal sum is paid out before the appeal is heard, the Applicant stands to suffer substantial loss.

17. The final consideration is security for the due performance of the decree. The Applicant has expressed willingness to abide by any conditions as to security. Security serves the purpose of balancing the competing interests of both parties.

18. Taking into account all the circumstances of this matter, I am satisfied that the Applicant has met the threshold for grant of stay of execution pending appeal.

19. Consequently, the Notice of Motion dated 16th April 2026 has merit and is allowed. I make the following orders

a) There shall be a stay of execution of the judgment and decree in **Eldoret MCCC NO. E512 OF 2025** pending the hearing and determination of the appeal.

b) The Applicant shall within thirty (30) days deposit half the decretal sum in an interest earning joint account in the names of counsel for the parties

c) In default of compliance with order (b) above, the stay granted herein shall automatically lapse.

d) Costs of the application shall abide the outcome of the appeal.

**Dated signed and delivered virtually this 13th day of May
2026**

A.K. NDUNG'U

JUDGE