



**Platinum Credit Limited v Office of the Data Protection Commissioner & another
(Civil Appeal E1144 of 2025) [2026] KEHC 6202 (KLR) (Civ) (7 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 6202 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E1144 OF 2025

WA OKWANY, J

MAY 7, 2026

BETWEEN

PLATINUM CREDIT LIMITED APPLICANT

AND

OFFICE OF THE DATA PROTECTION COMMISSIONER 1ST RESPONDENT

ERICK KIROGA KURIA 2ND RESPONDENT

RULING

1. The 2nd Respondent lodged a complaint before the Office of the Data Protection Commissioner alleging unlawful processing of personal data through unsolicited communications.
2. The Commissioner, in a determination dated 30th October 2025, found the Applicant liable, awarded the 2nd Respondent compensation of Kshs. 250,000 and issued an enforcement notice.
3. Aggrieved by the Commissioner's said decision, the Applicant filed an appeal and now seeks stay of execution pending appeal.
4. This ruling is in respect to the Notice of Motion dated 12th November 2025 which seeks an order for stay of execution of the determination and enforcement notice issued by the Data Protection Commissioner on 30th October 2025 in ODPC Complaint No. 1108 of 2025, pending the hearing and determination of this appeal.
5. The application is premised on the grounds set out on its face and the supporting affidavit. The Applicant contends that unless stay is granted, the appeal will be rendered nugatory, and that it will suffer substantial loss.
6. The application was canvassed by way of written submissions which I have considered.



The Applicant's Submissions

7. The Applicant highlighted the principles governing the granting of stay of execution as settled under Order 42 Rule 6 of the Civil Procedure Rules and submitted that the application was filed without unreasonable delay, the impugned decision having been delivered on 30th October 2025 and the application filed on 12th November 2025. The Applicant added that it stands to suffer substantial loss as the 2nd Respondent may proceed with execution, thereby rendering the appeal nugatory. The Applicant also expressed willingness to furnish security as may be ordered by the Court.
8. The Applicant relied on several authorities including; *Tropical Commodities Suppliers Ltd & Others vs. International Credit Bank Ltd (in liquidation)* [2004] 2 EA 331 and *James Wangalwa & Another vs. Agnes Naliaka Cheseto* [2012] eKLR.

2nd Respondent's Submissions

9. The 2nd Respondent opposed the application and submitted that the Applicant has not demonstrated substantial loss, that execution of a lawful decision does not amount to substantial loss and that the Applicant failed to prove that the 2nd Respondent is incapable of refunding the decretal sum.
10. The 2nd Respondent relied on the decisions in *Butt vs. Rent Restriction Tribunal* [1982] KLR 417 and *Tabro Transporters Ltd vs. Absalom Dova Lumbasi* [2012] eKLR.
11. In the alternative, the 2nd Respondent urged the Court, if inclined to grant stay, to impose conditions including partial payment and deposit of the balance in a joint interest earning account.

Analysis and Determination

12. Having considered the pleadings filed herein and the parties' submissions, I find that the single issue for determination is whether the Application meets the threshold set for the granting of stay of execution pending appeal.
13. The applicable law is Order 42 Rule 6(2) of the Civil Procedure Rules, which provides that:

“No order for stay of execution shall be made... unless— (a) the court is satisfied that substantial loss may result to the applicant... and that the application has been made without unreasonable delay; and (b) such security as the court orders... has been given.”
14. On whether the application was filed without delay I note that while the impugned decision was delivered on 30th October 2025, the present application was filed on 12th November 2025.
15. I find that the application was filed timeously and without unreasonable delay.
16. On whether substantial loss has been demonstrated, I am alive to the fact that proof substantial loss is the foundation of an application for stay of execution. In *Tropical Commodities Suppliers Ltd & Others vs. International Credit Bank Ltd (in liquidation)* [2004] 2 EA 331, the Court stated that substantial loss does not represent any particular mathematical formula as it refers to any loss that is of real worth or value.
17. Further, in *James Wangalwa & Another vs. Agnes Naliaka Cheseto* [2012] eKLR, the Court held that substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.
18. In the instant case, I note that the 2nd Respondent argued that no substantial loss has been demonstrated. I find that the decretal sum, though modest, is not insignificant. Moreover, the



Applicant has expressed apprehension that recovery may not be guaranteed and that the appeal challenges a regulatory determination whose consequences extend beyond the monetary award.

19. In the circumstances of this case, I am persuaded that the Applicant has demonstrated a reasonable apprehension of substantial loss, sufficient to warrant the Court's intervention.
20. On security for due performance of the decree, I note that the Applicant has expressed willingness to provide security. In *Focin Motorcycle Co. Limited vs. Ann Wambui Wangui & Another* [2018] eKLR, the Court held that it is sufficient for the applicant to state that he is ready to provide security and further, that it is the discretion of the court to determine the security.
21. Security being a mandatory requirement, the Court will impose appropriate terms.
22. The power to grant stay is discretionary. In *Butt vs. Rent Restriction Tribunal* [1982] KLR 417, the Court stated that the power of the court to grant or refuse an application for a stay of execution is discretionary and should be exercised in such a way as not to prevent an appeal."
23. The Court is also required to balance the Applicant's right of appeal and the Respondent's right to enjoy the fruits of judgment.
24. In the interests of justice, I find that this is a proper case to grant conditional stay.
25. Consequently, I allow the Notice of Motion dated 12th November 2025 in the following terms:
 - a. There shall be a stay of execution of the determination and enforcement notice issued on 30th October 2025 pending the hearing and determination of the appeal.
 - b. The stay is granted on condition that;
 - i. The Applicant shall pay to the 2nd Respondent one-half ($\frac{1}{2}$) of the decretal sum within 30 days from the date hereof; and
 - ii. The balance shall be deposited in a joint interest earning account in the names of the parties' advocates within the same period.
 - c. In default of compliance with (b) above, the stay orders shall automatically lapse.
 - d. Costs of the application shall abide the outcome of the appeal.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7TH DAY OF MAY 2026.

HON W. A. OKWANY

JUDGE

In the presence of

Ms Nyabuta for Ms Ogai for Appellant

Kuria for 2nd Respondent

Abdirzak - Court Assistant

