



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

COUNTY COURT NAME: MAKUENI HIGH COURT

CASE NUMBER: HCCA/E088/2025

NICODEMUS USIA AND STEPHEN MWENDWA VS HARRISON KIETI KIVAI

RULING

REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA AT
MAKUENI CIVIL APPEAL NO. E088 OF
2025**

NICODEMUS USIA.....1ST APPLICANT/ APPELLANT

STEPHEN MWENDWA.....2ND APPLICANT/ APPELLANT

-VERSUS-

HARRISON KIETI KIVAI.....RESPONDENT

RULING

1. The Application before me is dated 24th October, 2025 and is brought under the provisions of Sections 3A, and 65 of the Civil Procedure Act (Cap 21), Order 22 rule 22, Order 42 Rule 6, Order 50 rule 6 and Order 51 Rules 1 and 3 of the Civil Procedure Rules, 2010 . The Applicant seeks orders:

i. Spent.



ii. *Spent.*

iii. *That this Honourable Court be pleased to grant an Order of Stay of Execution of the Judgment and Decree rendered on the 17th day of September, 2025 in MAKUENI MCCC NO. E154 OF 2024, Harrison Kieti Kivai -Vs- Nicodemus Usia And Others together with all consequential orders arising there from and/ or attendant thereto, pending the hearing and determination of the Appeal.*

iv. *That the firm of KRK Advocates LLP be granted leave to come on record for the Applicants herein in this matter.*

v. *That the court grants any other orders that it may deem fit to grant.*

vi. *That Costs of the Application do abide the outcome of the Appeal.*

2. The application is supported by the grounds on its face and the grounds in the affidavit of support sworn by the 2nd applicant Stephen Mwendwa. . He reiterates the grounds on the face of the application: That

a) *The Respondent herein filed a suit against the Applicants, concerning compensation on account of an accident. The Honourable Trial Court rendered itself on the matter on 17th day of September, 2025 where the Applicants were found 100% Liable for the accident and the Respondent herein awarded Kshs. 1, 200, 000/- as General Damages as well as Special Damages of Kshs. 20, 460/=.*

b) *the Applicants are aggrieved by the said decision and have lodged an appeal against the judgment therein.*



c) *That the applicants have an arguable appeal with high chances of success as demonstrated by the Memorandum of Appeal.*

d) *The applicants are apprehensive that the respondent might proceed with execution at any time, and the Applicants are now exposed and likely to suffer substantial loss if the respondent proceed with execution.*

e) *The Decretal Amount is substantial hence need to have an order of Stay of Execution to safeguard the interests of the Applicants' property pending the hearing and determination of the appeal.*

f) *The Applicants are ready and willing to abide by such terms' and/ or conditions, as the Court may deem fit and expedient in particular the Applicants are ready, able and willing to provide security.*

g) *The Respondent will not suffer any prejudice or any damage that cannot be compensated by way of costs if this application is allowed.*

3. The application is opposed vide a replying affidavit sworn by Harrison Kieti Kivai who avers that he is not opposed to the said Application save for paragraph (3) of the Application on stay of execution pending hearing and determination of the appeal which he says is aimed at denying him the fruits of the judgment.

4. That the Applicant should deposit such security as the court orders for due performance of the decree, , the appellant should



be ordered to release half of the decretal sum to him through his advocates on record and deposit the remaining half in a joint interest earning account.



5. He avers that the case was heard and determined on merit as they Appellant did not offer any evidence to corroborate their case and that the Memorandum of Appeal does not raise any reasonable ground of appeal, the intended Appeal is merely meant to frustrate his efforts of reaping the fruits of his judgment.

6. That if this Honorable Court is inclined to allow this instant application, he prays that the Applicant be ordered to pay him through his advocates on record half of the decretal sum of Kshs. 683,630/= and the other half of the decretal sum of Kshs. 683,630/= be deposited in a joint interest earning bank account in the names of both counsels.

7. The application was canvassed by way of written submissions.

8. The Applicants on their part submits that the Respondent herein filed and/ or lodged a suit against the Applicants at Makueni MCCC NO.E154 OF 2024, for compensation towards and on account of an accident claim. That the Honourable Trial Court rendered itself on the matter on 17thday of September, 2025 where the Applicants was found 100% Liable for the accident and the Respondent herein awarded Kshs. 1,200,000/- as General Damages for Pain & Suffering and Special Damages of Kshs. 20, 460/=.

9. That upon obtaining and reviewing the said Judgment, the Applicant herein lodged an Appeal against the quantum as awarded by the Honourable Trial Court.

10. On whether the Court should grant Stay of Execution of the Judgment of the lower court pending the determination of the Appeal, they submit that the conditions upon which the Applicant must satisfy in order to be granted the orders of stay of



execution pending appeal are stated under Order 42-Rule 6 (2)-
of the

Civil Procedure Rules. The Applicant relies on **Esther Wamaita
Njihia & 2**

Others -Vs- Safaricom Limited [2014] eKLR.

11. They submit that their memorandum of appeal raises
substantial grounds, and



is clearly arguable and that the grant of a stay of execution pending the hearing and determination of the Appeal is essential as if stay is not granted, the Appeal will be rendered nugatory and an exercise in futility. That additionally, the applicants are ready and willing to deposit security if ordered by the court.

12. That if stay is not granted, the respondent is likely to proceed with execution, and there is a foreseeable risk that execution will occur before appeal is determined which might render the appeal nugatory and occasioning substantial and irreparable loss to the applicants.

13. The Applicants further submit that the Respondent's means are unknown and it is likely that the Respondent may not be capable to refund the decretal amount in the event that the Applicants' Appeal succeeds. They contend that the Respondent's financial status is still unknown and has not been proven.

14. The applicants contend further that they intend to prosecute the appeal without delay and hence no prejudice will be occasioned to the respondent as they will still enjoy the fruits of judgment once the appeal is determined.

15. They submit that granting stay orders preserves the subject matter and ensures that the appeal is heard on merit, and hence urge the court to exercise discretion and grant stay orders pending determination of the appeal.

Analysis and Determination

16. I have considered the application, the rival affidavits and the submissions on record. The issue for determination in this matter



is whether the stay of execution should issue pending appeal.

17. On an application for stay of execution pending appeal, the provisions of Order 42 Rule 6(2) of the Civil Procedure Rules provides for three conditions to be met by an applicant seeking such a prayer and which are inter alia; that the



application must be filed without undue delay; that the Applicant stands to suffer substantial loss if the order is not granted; that the Applicant is ready and willing to offer security for the due performance of the decree which will ultimately be binding upon him/her.

18. I have considered the application carefully. The respondent is not opposed to the application of the applicants release part of the decretal sum to him , and the rest he deposited in a joint interest earning account in the name of both counsel..

19. I have perused the memorandum of appeal - the appeal is against the quantum of damages only. Unfortunately, the Judgment of the trial court does not state what the applicant proposed in damages - neither do the applicants disclose the same in their affidavit.

20. The applicants are ready willing and able to abide by the orders on security for the performance of the decree that may issue from this court. In the circumstances - the application dated 24th October,2025 is allowed in the following terms is allowed as follows :-

1) There be stay of execution of the Judgment and decree in Makeni MCCC E0154/2024 pending the hearing and determination of the appeal herein.

2) The order of stay is on condition that the applicants release to the respondent 1/3 of the decretal Sum, and the 2/3 balance be deposited in a joint interest earning account in the names of both counsel. That this Order be complied with within 30 days with effect from 11/5/2026. In default the stay will lapse and execution will issue.

3) The costs of the application to abide the outcome of the appeal.



21. Orders accordingly.

RULING dated, signed and delivered virtually this 8th May 2026

Mumbua T Matheka



Judge

CA Chrispol

Ms. Langat for

appellants Ms. Sergon

for Respondent

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SIGNED BY/FOR:

LADY JUSTICE MATHEKA, TERESIA MUMBUA



★ THE JUDICIARY OF KENYA ★

**LADY JUSTICE
MATHEKA, TERESIA
MUMBUA**

Makueni High Court

High Court Div Date: 2026-05-08

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