



**Nation Media Group Limited v Gatonye (Civil Application
E653 of 2024) [2025] KECA 1173 (KLR) (20 June 2025) (Ruling)**

Neutral citation: [2025] KECA 1173 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E653 OF 2024
W KARANJA, K M'INOTI & P NYAMWEYA, JJA
JUNE 20, 2025**

BETWEEN

NATION MEDIA GROUP LIMITED APPLICANT

AND

CHARLES WAWERU GATONYE RESPONDENT

*(An application for stay of execution pending appeal from the
Judgement and Decree (on Quantum) of the High Court at Nairobi
(Sergon J.) delivered on 7th October 2022 in Civil Case No. 431 of 2006)*

RULING

1. The Nation Media Group has invoked the provisions of Rule 5(2)(b) of the [Court of Appeal Rules](#) of 2022 in its application to this Court dated 27th November 2024, that seeks to stay execution of a judgment delivered on 7th October 2022 by the High Court (Sergon J.) in favour of Charles Waweru Gatonye SC in Civil Case No. 431 of 2006, and consequential orders thereto. The said judgment which was on the quantum of damages, was consequent to an earlier judgment on liability delivered on 28th May 2020 by the High Court (C.W.Githua J.) in a test suit, being HCCC No. 430 of 2006 -[Lucy M. Kambuni v Nation Media Group Limited](#). The learned Judge of the High Court awarded Mr. Gatonye SC general damages of Kshs. 10,000,000/=, aggravated damages of Kshs 1,000,000/=, exemplary damages of Kshs. 1,200,000/= and damages in lieu of an apology Kshs. 1,000,000/= together with interest at court rates in the said judgment.
2. It is averred by Nation Media Group in its application and affidavit in support thereof sworn by Sekou Owino, its Head of Legal, that subsequent to the impugned judgment, it filed Nairobi Civil Appeal (Application) No. E480 of 2022-[Nation Media Group Limited v Lucy M. Kambuni](#) in this Court, and obtained a stay of execution of the judgment on liability delivered by the High Court in HCCC No. 430 of 2006 in a ruling delivered by the Court (Warsame, Ali-Aroni & Mativo JJA) on 15th March



2024. However, that notwithstanding the said ruling and order of this Court, Mr. Gatonye SC has applied for notice to show cause for Nation Media Group's committal to civil jail in execution of the decree, which is pending hearing. Therefore, that the appeals against liability and quantum will be rendered nugatory and otiose if the orders for stay of execution are not granted

3. In response, Mr. Gatonye SC filed a replying affidavit in opposition to the application, in which he highlighted his achievements in his long career in the legal profession, which led to the conferment of the rank of Senior Counsel, and detailed the events leading to the defamation suit he filed against Nation Media Group, with respect to which the impugned judgments on liability and quantum were entered. Whereas Mr. Gatonye SC accepted that the intended appeal may in fact be arguable, he contested that Nation Media Group had not demonstrated that the intended appeal would be rendered nugatory if the orders it is seeking are not granted. He also clarified that the proceedings that are presently pending in the High Court is an application for Notice to Show Cause why execution should not issue by way of attachment and sale of the Nation Media Group's moveable property and not for arrest and committal to civil jail as alleged in their application.
4. Mr. Gatonye SC averred that he is capable of repaying the decretal amount in the event that the intended appeal is successful, and Nation Media Group has not made any allegation that he did not have the financial ability to refund the decretal amount should execution proceed; neither has it demonstrated how it stands to suffer beyond merely stating that the appeal would be rendered nugatory if the orders sought are not granted. Further, that financial loss alone is not sufficient ground to justify the stay of execution of a monetary decree, especially in this instance where the applicant is a corporation with considerable financial means; Nation Media Group has not offered any security or made any proposal to safeguard the interests of the decree-holder; the application is only meant to cause delay in the closure of the matter, and it is in the interest of justice that he be allowed to enjoy the fruits of the judgment, having waited for over eighteen (18) years.
5. However, and without prejudice to the foregoing, should this court be inclined to grant a stay, then such an order be conditional upon Nation Media Group depositing the full decretal sum in a joint interest earning account to safeguard his interests pending the appeal.
6. We heard the application on 28th January 2025 on this Court's virtual platform, and it was conceded by learned Senior Counsel Mr. John Ohaga, who appeared for Mr. Gatonye SC, that the intended appeal by Nation Media Group may be arguable. The learned Senior Counsel however reiterated that it had not been demonstrated that the said appeal will be rendered nugatory if the stay orders are not granted.
7. Senior Counsel relied on written submissions dated 27th January 2025, in which he cited the decisions in *Kenya Shell Limited v Benjamin Karuga Kibiru & another* [1986] eKLR, *Kenya Hotels Properties Limited v Wilesden Investments Properties Limited* [2007] eKLR and *The Nairobi Hospital v Kenya Union of Domestic Hotels, Education Institutions, Hospital and Allied Workers Union (KUDHEIHA)*, Civil Appeal No. NAI E194 of 2022 to urge that Nation Media Group that has not demonstrated the loss it would suffer or its financial position, and how the same would be affected if this Court were to allow the execution to proceed.
8. Furthermore, that the burden was on Nation Media Group to demonstrate that Mr. Gatonye SC is a man of straw or will otherwise be unable to repay the decretal sum before the evidential burden could shift to him, as held in the case of *National Industrial Credit Bank Limited v Aquinas Francis Wasike; Lantech Ltd* [2006] KECA 333 (KLR). Lastly, learned Senior Counsel informed the Court that Nation Media Group had since settled the awards made in other related suits.
9. Learned counsel Mr Wakhisi, holding brief for learned counsel Mr. Emmanuel Wetangula for Nation Media Group, relied on written submissions which he claimed to have filed on the morning of the



hearing and which were not made available to the Court in time. His brief oral submissions were that the arguability of their intended appeal had been conceded, and the intended appeal will be rendered nugatory for the reason that Mr. Gatonye SC had not availed evidence that he had the capacity to refund the decretal sum in the event the intended appeal succeeds.

10. We have considered the application and submissions made by the learned counsel for the parties. The principles applicable in the exercise of this Court's discretion under Rule 5 (2) (b) of the Court of Appeal Rules of 2022 to grant a stay of execution or injunction are well settled. An applicant has to satisfy two requirements. Firstly, that he or she has an arguable appeal. Secondly, that unless an order of stay is granted, the appeal or intended appeal would be rendered nugatory. These principles have been restated and amplified by this Court in Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 others [2013] eKLR.
11. Both limbs must be demonstrated before a party can obtain a relief under rule 5(2) (b) (see Republic v Kenya Anti-Corruption Commission & 2 others [2009] KLR 31; Reliance Bank Ltd v Norlake investments Ltd [2002] I EA 227 and Githunguri v Jimba Credit Corporation No (2) [1988] KLR 838). In addition, this Court exercises original jurisdiction under Rule 5 (2)(b) as held in Ruben & 9 others v Nderitu & another [1989] KLR 459 and Trust Bank Limited and Another v Investech Bank Limited and 3 Others [2000] eKLR.
12. It was conceded by Mr. Ohaga SC that the appeal is arguable, and we are in this respect alive to the definition of arguability of an appeal or an intended appeal being one which raises a bona fide issue worth of consideration by the Court (see Kenya Tea Growers Association & Another v Kenya Planters Agricultural Workers Union, Civil Application No. Nai. 72 of 2011 UR). We in this regard note that the Nation Media Group has in this respect challenged the justification of the awards of damages made to Mr. Gatonye SC in the impugned judgment, which is an arguable point.
13. As to whether the intended appeal will be rendered nugatory, an appeal or intended appeal will be rendered nugatory where the resulting effect of not granting a stay of execution is likely to be irreversible or, where damages will not reasonably compensate the party aggrieved (see Stanley Kangethe Kinyanjui v Tony Keter & 5 others Civil (*supra*)). Hence the various decisions of this Court that the purpose of a stay of execution is to preserve the subject matter of the appeal.
14. In the present application, the subject matter is a monetary decree, and Mr. Gatonye SC averred that he is a man of means who can refund the decretal sum if the appeal succeeds. This averment was not disputed by Nation Media Group. In addition, Mr. Wakhisi did not dispute that despite the stay of execution of the judgment on liability, Nation Media Group has proceeded to settle awards made in other related suits. It is therefore evident that Nation Media Group will not suffer any undue financial hardship or irreversible prejudice if the stay orders are not granted.
15. We accordingly find that the Nation Media Group has not satisfied the second limb for the grant of orders of stay, namely that its intended appeal will be rendered nugatory. Its application dated 27th November 2024 is accordingly found not to have merit, and is hereby dismissed with costs to Mr. Gatonye SC.
16. Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF JUNE, 2025.

WANJIRU KARANJA

.....

JUDGE OF APPEAL



K. M'INOTI

.....

JUDGE OF APPEAL

P. NYAMWEYA

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

signed.

DEPUTY REGISTRAR

