



**Murunga Investments Limited v Paulsa Bins Limited (Civil Appeal E428 of 2025) [2025] KEHC 12222 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 12222 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL APPEAL E428 OF 2025  
TW CHERERE, J  
MAY 29, 2025**

**BETWEEN**

**MURUNGA INVESTMENTS LIMITED ..... APPELLANT**

**AND**

**PAULSA BINS LIMITED ..... RESPONDENT**

**RULING**

1. The Notice of Motion dated 17<sup>th</sup> April 2025 is brought under Section 3A of the [Civil Procedure Act](#), Order 42 Rule 6, and Order 51 of the Civil Procedure Rules. The Appellant seeks an order for stay of execution of the judgment and decree delivered on 20<sup>th</sup> March 2025 in MCOMMSU/E1644/2021, pending the hearing and determination of the appeal. The application also prays for costs.
2. The application is supported by the affidavit of Mary Wanja Karanja, a director of the Appellant, who deposes that the Appellant is aggrieved by the judgment and that it is in the interest of justice to stay execution pending appeal.
3. The Respondent opposed the application through grounds of opposition dated 06<sup>th</sup> May 2025. The Respondent contends that the Appellant has not demonstrated substantial loss, and that the application lacks merit and should be dismissed with costs.

**Issues for determination**

4. Flowing from the supporting affidavit and the grounds of opposition, the sole issue for determination is whether the application satisfies the threshold for grant of a stay of execution pending appeal as set out under Order 42 Rule 6(2) of the Civil Procedure Rules.
4. The principles that govern the grant of stay of execution pending appeal are well settled under Order 42 Rule 6(2) of the Civil Procedure Rules. An applicant must satisfy the Court that:



- a. Substantial loss may result unless the order is made
  - b. The application has been made without unreasonable delay
  - c. Security for the due performance of the decree has been given.
4. In the leading decision of the Court of Appeal in *Kenya Shell Ltd v Benjamin Karuga Kibiru & Another* [1986] eKLR, it was stated:
- “If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by refusal to grant stay.”
6. Similarly, in *Antoine Ndiaye v African Virtual University* [2015] eKLR, Gikonyo J. explained:
- “The cornerstone of the jurisdiction under rule 6 of Order 42 of the Civil Procedure Rules is substantial loss... the law does not favour withholding of a decree holder’s rights... It is not enough to merely state that substantial loss will result; the applicant must demonstrate it.”
7. It is not in dispute that the Appellant has deposited the sum of KES. 700,000 pursuant to an earlier order of this Court granting temporary stay of execution. This satisfies the requirement under Order 42 Rule 6(2)(b) on security.
7. However, security is only one of the conditions. The Appellant has not demonstrated that substantial loss will be suffered if the order for stay is not granted.
7. The jurisprudence on the conditions for granting a stay of execution pending appeal is well-established that mere assertions or a general invocation of the “interest of justice” are insufficient. The burden rests on the applicant to present concrete and credible evidence of likely prejudice, which the Appellant has failed to discharge. Moreover, justice is not one-sided. The Appellant is equally entitled to the enjoyment of the fruits of its judgment, and should not be deprived of that benefit without reasonable cause or compelling justification.
7. Whereas the application was filed without undue delay and the requisite security has been deposited, the failure to demonstrate the likelihood of substantial loss is fatal to the application.
7. In the result, the application dated 17<sup>th</sup> April 2025 fails to meet the threshold under Order 42 Rule 6(2) of the Civil Procedure Rules and it is accordingly dismissed with costs to the Respondent.
7. This appeal shall be mentioned before the Deputy Registrar on 03<sup>rd</sup> July 2025 to confirm the filing and the service of the record of appeal

**DELIVERED AT NAIROBI THIS 29<sup>TH</sup> DAY OF MAY 2025**

**WAMAE.T. W. CHERERE**

**JUDGE**

Appearances

Court Assistant - Ruth

For Appellants - Mr. Ng’ang’a for Njoroge Ng’ang’a & Co. Advocates

For Respondent - Ms. Kirui for Njeru Nyaga & Co. Advocates

