



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Onyango v Kosgei ((Suing as the Administrator and/or Personal Representative of the Estate of Danson Kipngeno Langat)) (Civil Appeal E014 of 2015) [2025] KEHC 11508 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11508 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CIVIL APPEAL E014 OF 2015  
JK SERGON, J  
JULY 31, 2025**

**BETWEEN**

**CALVIN OMONDI ONYANGO ..... APPELLANT**

**AND**

**PAUL KIPLANGAT KOSGEI ..... RESPONDENT**

**(SUING AS THE ADMINISTRATOR AND/OR PERSONAL REPRESENTATIVE OF THE ESTATE OF DANSON KIPNGENO LANGAT)**

**RULING**

1. The application coming up for determination is a notice of motion dated 9th May, 2025 seeking for the following orders;
  - (i) Spent
  - (ii) Spent
  - (iii) That there be a stay execution of the judgment/decree in Kericho MCCC No. E170 of 2022 delivered on 20th February, 2025 pending hearing and determination of the appeal.
  - (iv) That the costs of this application be provided for.
2. The application is based on grounds on the face of it and the supporting affidavit sworn by Millian Aligula, the Legal Officer of Britam General Insurance Company Limited, the appellant's insurer herein, he is conversant with the instant proceedings and competent to swear the affidavit.
3. He avers that as the appellant's insurer they are obligated to satisfy the judgment/decree of 20th February, 2025 in the lower court subject to policy and statutory limits.



4. He avers that the suit was heard, determined and judgment delivered on 20th February, 2025 and that upon delivery of the judgment and being aggrieved with the findings on liability and quantum, they lodged an appeal against the entire judgment to this court timeously.
5. He avers that the appeal is arguable with high chances of success, the appellant will suffer substantial loss if stay is not granted pending the outcome of the lodged appeal and that the respondent will suffer no prejudice if the application is allowed.
6. He avers that it is in the interest of justice that the stay of execution of judgment/decree in Kericho MCC E170 of 2022 pending the hearing and determination of the application and the intended appeal.
7. The matter came up for inter partes hearing on 21st May, 2025 and the learned counsel stated that the instant application had been served upon the respondent and an affidavit of service filed, she therefore urged this court to treat the application as unopposed. There was no response and/or representation on the part of the respondent.
8. This court has considered the application and finds that the sole issue for determination is whether to grant a stay of execution pending hearing and determination of the instant appeal.
9. On the issue as to whether to grant a stay of execution, the judgment was delivered on 20th February, 2025 while the present application was filed on 9th May, 2025, slightly under two months after the lapse of the 30 days stay of execution granted by the trial court.
10. An application for stay invokes the discretionary powers of this court under Order 42 Rule 6 (1) of the Civil Procedure Rules, 2010 that empowers the court to stay execution, either of its judgement or that of a court whose decision is being appealed from, pending appeal.
11. The conditions to be met before stay is granted are provided for under Order 42, Rule 6 (2) which states as follows: “No order for stay of execution shall be made under sub rule (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.”
12. This court notes that the instant application was not filed timeously, however, the delay was not inordinate. This court also notes that there was no response on the part of the respondent, this notwithstanding, the applicant contended that they would suffer irreparable and substantial loss and damages if orders sought herein are not granted and further that the intended appeal will be rendered nugatory.
13. The applicant further contended that stay of execution orders sought will not occasion any prejudice to the respondent. The applicant did not offer security for due performance of the decree, however, this court is enjoined to balance the interests of the parties to this suit.
14. In the case of FOcin Motorcycle Co. Limited v. Ann Wambui Wangui & Anor [2018] eKLR, it was stated that: “Where the applicant proposes to provide security as the Applicant has done, it is a mark of good faith that the application for stay is not just meant to deny the respondent the fruits of judgment. My view is that it is sufficient for the applicant to state that he is ready to provide security or to propose the kind of security but it is the discretion of the Court to determine the security. The Applicant has offered to provide security and has therefore satisfied this ground for stay.”



15. Having considered the application and the averments in the supporting affidavit by the applicant on the issue of stay and the circumstances of this case, it is the finding of this court that the applicant is entitled to a stay of execution as he ventilates his intended appeal.
16. It is noted that on 13th May, 2025, this court had issued interim order directing the appellant to deposit the entire decretal sum of Kshs. 1,282,260/= within thirty (30) days. In the end, the Motion dated 8<sup>th</sup> May, 2025 is allowed given rise to issuance of the following Orders:-
- (i) There be an order for stay of execution of the judgment/decreed in Kericho MCC E170 of 2022 pending the hearing and determination of the appeal on condition that the Applicant deposits the decretal sum in an interested earning Account in the joint names of the Advocates or Firms of Advocates within 45 days from the date hereof
  - (ii) Costs of the Application to abide the outcome of the Appeal.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 31ST DAY OF JULY, 2025.**

.....

**J. K. SERGON**

**JUDGE**

In the Presence of:

C/Assistant – Rutoh

No Appearance

