



**Premier Credit Kenya v Kihiko (Civil Appeal E067 of 2024)  
[2025] KEHC 11375 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11375 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CIVIL APPEAL E067 OF 2024**

**JK SERGON, J  
JULY 31, 2025**

**BETWEEN**

**PREMIER CREDIT KENYA ..... APPELLANT**

**AND**

**KAMAU KHIKO ..... RESPONDENT**

*(Being an appeal from the judgment and decree of the Honourable F.M Nyakundi PM delivered on 1st October, 2024 in Kericho Magistrate Court Civil Case No. E097 of 2023)*

**RULING**

1. The application coming up for determination is a notice of motion dated 17th June, 2025 seeking the following orders;
  - (i) Spent
  - (ii) Spent
  - (iii) That there be a stay of execution of the judgment of the Honourable Trial Court delivered on 1st October 2024 pending the hearing and determination of the filed appeal.
  - (iv) That any other relief that the Honourable Court deems fit and appropriate to grant.
  - (v) That costs be in the cause.
2. The application is based on grounds on the face of it and the supporting affidavit sworn by John Koros, the regional manager of the Defendant/Applicant herein and duly conversant with all the matters in question, and duly authorized to swear the affidavit.
3. He contends that the Honourable trial court delivered a judgment in this matter on 1st October 2024 as against the Defendant/Applicant and that upon delivery of the judgment the Advocates for the



Defendant/Applicant on visiting the Court Tracking System found out the judgment on the system is of a different matter from the matter herein.

4. He further contends that the Advocates for the Defendant/Applicant followed up with the Honourable Court to have the correct judgment posted on the Court Tracking System. The wait for the judgment was long and uncertain and that due to the unavailability of the correct judgment on the system the Defendant/Applicant did not have sufficient details of the judgment to inform their next course of action and/or seek instructions on a probable appeal.
5. It is his contention Defendant/Applicant has since obtained the Judgement and typed proceedings and successfully filed the appeal and that the Advocates for the Plaintiff/Respondent have now taken steps to execute the said judgment.
6. It is further his contention that the Defendant/Applicant stands to suffer irreparable harm and loss if the prayers sought herein are not granted and the Appeal will be rendered nugatory.
7. The matter came up for inter partes hearing and the learned counsel for the applicant 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 1st October, 2024 while the present application was filed on 17th June, 2025, seven months after the lapse of the 30 days stay of execution granted by the trial court. It is trite law that an appeal does not operate as an automatic stay of execution. 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. 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.” 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 as the respondents taken steps to execute the said judgment and therefore the intended appeal will be rendered nugatory. 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 has the discretion to determine the nature of security. In *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.” 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 the intended appeal.



10. The notice of motion dated 17th June, 2025 is hereby allowed giving rise to issuance of the following Orders:-

(i) There be an order for stay of execution of the judgment/decreed in Kericho Magistrate Court Civil Case No. E097 of 2023 pending the hearing and determination of the intended appeal on condition that the Appellant deposits the sum of Kshs.3,320,000/= in an interest earning Account in the joint names of the Advocates or firms of Advocates appearing in this Appeal within 45 days failure to which, the stay order automatically lapses.

(ii) Costs to abide in the outcome of the appeal.

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

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**J. K. SERGON**

**JUDGE**

In the Presence of:-

C/Assistant – Rutoh

Miss Itumo holding brief for Musyoki for the Applicant

No Appearance for the Respondent

