Application for Stay of Execution of an Imported Vehicle Demurrage Decree

Educational sample 251 | Mombasa

Educational reconstruction from a reported Kenyan decision. Newly drafted wording, not an original court filing or a matter handled by our team. Specimen identities are bracketed. Adapt to genuine facts, current law, jurisdiction and court directions before signing, swearing or filing.

Reconstructed formal document

REPUBLIC OF KENYA

IN THE HIGH COURT AT MOMBASA

CIVIL APPEAL NO [reference]

[APPELLANT] v [RESPONDENT]

NOTICE OF MOTION

1. The Applicant moves in Civil Appeal [number] under Order 42 rule 6 and Order 51 rule 1 of the Civil Procedure Rules. The challenged judgment, decree and appeal filing are identified in the supporting affidavit. The application seeks a stay of execution, not a general stay of proceedings or a final reversal of vehicle ownership.

2. The Applicant asks for a defined interim stay pending the inter partes hearing and, if justified, a stay pending determination of the appeal on terms the Court directs. The affected execution, parties, amounts and operative decree paragraphs are [exact particulars]. All necessary recipients are identified for service.

3. The decree concerns imported vehicles and demurrage, with the source historical sum of KSh 13,583,667 allocated fifty per cent to each of two liable parties plus the specified further charges. The actual decree and current account must be exhibited; the prayer must not mistakenly seek a stay of a different party liability.

4. The substantial loss alleged is [specific supported consequence and evidence], including any demonstrated repayment risk. The size of the debt or the ordinary possibility of execution alone is not asserted to satisfy the test. The supporting affidavit identifies the actual recipient and factual basis for the claimed risk.

5. The period between judgment, appeal and this motion is fully explained by [truthful dated events and records]. The source motion failed for unexplained delay. If no satisfactory explanation exists in the actual case, this specimen does not create one; the application must candidly disclose that weakness.

6. The Applicant offers [precise available security, amount, custodian and deposit period] for due performance, and proposes directions for prompt filing and prosecution of the appeal. Collection, storage and continuing demurrage require distinct lawful directions. Costs and appropriate conditions are left to the Court.

DATED at [place] on [date]. Signed [party or advocate]. DRAWN AND FILED BY [name and address for service]. TO BE SERVED UPON [each affected person and address].

Use and evidence notes

Use the actual existing cause, applicable power and precise interim or substantive prayers with genuine supporting evidence. Disclose adverse facts, earlier applications, current orders and delay. Complete affidavit, exhibits, urgency certificate only where justified, fee and service under current directions. A proposed corrected motion does not establish that the missing facts or procedural permission exist. Corrected substantive stay structure based on a failed historic application. It is not evidence that a timely motion, solvency evidence or security existed. Authenticate the decree and explain delay before using it; filing the appeal or motion creates no stay.

Supporting material: [date]; [author or custodian]; [description]; [bundle page]; [authenticating witness]; [admission or permission]. Attach genuine records only. This public specimen contains no exhibits, signatures, personal identifiers or sworn declaration.

Source and procedural limits

A dispute over ownership of imported vehicles generated storage charges. The trial order allocated KSh 13,583,667 and further demurrage between two parties at fifty per cent each, with interest and costs. One liable company filed an appeal in August 2023 but sought a stay only in April 2024 after a July 2023 judgment. Its officer asserted repayment risk and offered security, while the vehicles continued accumulating charges.

The High Court dismissed the stay application with costs because the roughly ten-month delay was unexplained and the applicant had not filed its available appeal record. The ruling did not determine the final appeal merits or hold that every large demurrage decree warrants a stay. Order 42 rule 6 permits the appellate court to consider stay whether the court below granted or refused one; an opponent contrary assertion was not a statutory prerequisite adopted by the Court.

An appeal does not automatically stay execution. Under Order 42 rule 6, address substantial loss with evidence, explain every relevant delay and propose adequate security for due performance. Keep existing judgment debt, continuing storage charges, collection rights and mitigation separate. A corrected specimen cannot supply a missing explanation or stop accruing charges without an actual order or agreement.

[2025] KEHC 1381 (KLR) - 21 February 2025. Source decision: https://new.kenyalaw.org/akn/ke/judgment/kehc/2025/1381/eng%402025-02-21

Reproduced primary text checked: https://sheriahub.com/cases/ke/caselaw/diamond-shipping-services-limited-v-kencott-cfs-3-others-2025-kehc-1381-klr.pdf

The original decision may identify participants. The specimen brackets identifying details. A source judgment does not prove this reconstruction was filed, an allegation succeeded, a later order remains unchanged or the same result will follow in another case.