Grounds of Opposition to a Delayed Stay Application for Port Demurrage

Educational sample 253 | 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]

GROUNDS OF OPPOSITION

1. The Respondent opposes the Applicant stay motion dated [date] in Civil Appeal [number] on the following grounds, read with the admitted procedural record and any separate factual affidavit. This document states grounds; it does not supply sworn facts about solvency or storage.

2. The Applicant has not demonstrated that the application was made without unreasonable delay under Order 42 rule 6(2). The judgment, appeal and motion dates are [record references]. The explanation offered fails to address [specific gap], rather than delay being treated as an automatic fixed-month rule.

3. The Applicant has not established substantial loss on the evidence relied upon. A large monetary decree and the ordinary incidence of lawful execution are not, without more, proof that payment will be irrecoverable. Any disputed assertion concerning the recipient means requires the proper evidential response.

4. The appeal record and prosecution steps are [actual record position]. The Respondent asks the Court to consider demonstrated inactivity and continuing storage charges. An assertion that an appeal is arguable does not dispense with the separate requirements for a High Court stay of execution.

5. The proposed security is inadequate or uncertain for [supported reason and decree component]. If the Court grants protection, it should specify adequate security, prompt deposit, appeal-prosecution dates and the consequence of default, while addressing continuing demurrage through appropriate separate directions.

6. The Respondent seeks dismissal with costs, or clearly limited conditions if a stay is granted. It does not argue that the High Court is invariably barred unless the trial court first refuses stay: Order 42 rule 6(1) allows appellate consideration whether the lower court granted or refused relief.

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

These are grounds of opposition to the actual motion, not a fact-finding preliminary objection or a replying affidavit. Tie each ground to the proper test and admitted record. Supply a separate authorised affidavit for disputed factual evidence where needed. Check court directions on response and service.

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.