Demurrage Stay Submissions on Unexplained Delay Security and Continuing Storage Loss

Educational sample 255 | 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]

WRITTEN SUBMISSIONS

1. The Court must apply Order 42 rule 6 to the actual stay request. The requirements include demonstrated substantial loss, an application without unreasonable delay and security for due performance as ordered. The memorandum of appeal does not itself suspend execution.

2. The material chronology is [record pages]. In the source the judgment preceded the motion by roughly ten months without a sufficient explanation, and the available appeal record was not filed. In this case the Court should assess each explained period and actual prosecution step rather than infer diligence from a bare request for proceedings.

3. The proposed repayment-risk case rests on [admitted affidavit facts]. The parties should address the identified recipient and evidence, not simply call the decree substantial. Ordinary execution consequences must be distinguished from the specific substantial loss said to justify protection.

4. Security must correspond to the operative liability and realistically be available. The Court should identify principal, any continuing demurrage, interest and costs, and give clear terms if protection is justified. A promise to place a fraction of the company share in an account is not automatically adequate security.

5. The retained vehicles continue generating the alleged storage account. The requested stay must be considered alongside mitigation and the lawful collection position without deciding ownership or creating a release order absent a proper prayer. Any alternative arrangement must be supported by the decree or a valid agreement.

6. The requested outcome is [dismissal or precisely conditioned stay] with appropriate costs and appeal directions. The source dismissed the motion; it did not decide the final appeal or impose a universal prior-refusal requirement. These submissions cannot provide facts missing from the affidavits.

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

Identify pleaded issues, admitted evidence and genuine record pages. Follow directions on length, authorities, filing and service. Submissions do not introduce exhibits or cure missing substantive prayers. Distinguish what a party sought from what the Court ordered, and an unsuccessful historical position from the actual holding.

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.