

KENYA / JUDGMENT

# Mitunguu Technical Institute v Reflection Investment Co Ltd [2026] KEHC 13575 (KLR)

[2026] KEHC 13575 (KLR)

COURT  
High Court

BEFORE  
SM Githinji

CASE / FILE NUMBER  
Small Claims Appeal E004 of 2025

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Mitunguu Technical Institute v Reflection Investment Co Ltd (Small Claims Appeal E004 of 2025)  
[2026] KEHC 13575 (KLR) (16 September 2026) (Ruling) Neutral citation:

[2026] KEHC 13575 (KLR) Republic of Kenya In the High Court at Meru Small Claims Appeal E004  
of 2025 SM Githinji, J September 16, 2026 Between Mitunguu Technical Institute Appellant  
and Reflection Investment Co Ltd Respondent

## Ruling

1. For determination is the Notice of Motion dated 9/10/2025 under Order 42 Rule 6, Order 51 Rule 1 of the Civil Procedure Rules and Sections 1A, 1B, 3, 3A & 63 (e) of the Civil Procedure Act , seeking that: 1. Spent 2. Spent 3. This honorable court be pleased to grant an order of stay of execution of the judgment/decreed of the court in Meru Small Claims Case No. SCCCOMM E343 of 2025 dated the 14 th day of August 2025 pending hearing and determination of this appeal. 4. Costs of this application be provided for. 2. The application is premised on the grounds that the Respondent herein filed Meru SCCCOMM E343/2025 against the Appellant, claiming a debt of Ksh. 887,422 arising out of a contract work done. Dissatisfied with the trial Court's Judgment, the Appellant has filed the instant appeal, which raises serious points of law. The Respondent has already served the Appellant with a warrant of attachment of its property, and unless the orders sought are granted, the appeal will be rendered nugatory. The appeal, which has good chances of success, was filed timeously and the Appellant will suffer substantial loss if execution proceeds. 3. The Respondent opposed the application vide a replying affidavit sworn by David Mburugu Murithi, its director, on 28/11/2025. He avers that he was engaged by the Applicant through the Respondent to undertake the construction works subject of this suit. He communicated to the Applicant that he had completed the said works as per the instructions given and requested that they

avail themselves for inspection. When he was undertaking the subject works, he was not supplied with a bill of quantities (BQ) or Plans of works but was directed to construct a similar structure as the one adjacent to where he was constructing the contracted one. The Procurement officer gave him the tender documents and the BQ on 11/4/2025, yet the work in question was completed on 28/3/2025. He was paid the first instalment of Ksh. 1,200,000 through a payment voucher dated 23/12/2024, and no queries were ever raised on the quality of works undertaken. He took loans in undertaking the subject venture, which have run into arrears due to the Applicant's failure to honour its part of the bargain, and he instructed auctioneers to recover the sums. He engages in other ventures and will refund the decretal sum in the event of a successful appeal. He prays for the dismissal of the application with costs, as the memorandum of appeal raises no triable issues. 4. The Applicant's Advocate, Mercy Kirimi swore a supplementary affidavit on 7/4/2026 in support of the application. 5. The application was canvassed by way of written submissions, which were only filed by Counsel for the Applicant.

## Determination

6. Order 42 Rule 6 (2) of the Civil Procedure Rules provides as follows; "No order for stay of execution shall be made under subrule (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." 7. The application was filed on 9/10/2025, while the impugning judgment was delivered on 14/8/2025. That delay of 2 months is not manifestly inordinate to be deemed unreasonable. 8. The cornerstone consideration in every application for stay is substantial loss, and the burden of proof lies on the Applicant, as was held by the Court of Appeal in *Kenya Shell Limited v Benjamin Karuga Kibiru & another* [1986] KECA 94 (KLR) that; "It is usually a good rule to see if order XLI rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms, is the corner stone of both jurisdictions for granting a stay. That is what has to be prevented. Therefore without this evidence it is difficult to see why the respondents should be kept out of their money." 9. Whereas the Applicant contends that the sale of the attached properties will gravely affect the activities of the technical institution, the Respondent terms the application a sham which ought to be dismissed with costs. 10. A money decree is not, by itself, a sufficient ground for stay of execution. The Applicant must demonstrate that:- 1. Substantial loss may result if stay is not granted, such as the inability to recover the money if the appeal succeeds. 2. The Respondent may be unable to refund the decretal sum; commonly referred to as the Respondent being a "man of straw." 3. Security for the due performance of the decree is provided. 11. It appears at paragraph 22 of its Replying Affidavit that the Respondent is amenable to the grant of conditional stay upon deposit of the entire decretal sum in a joint interest earning account. The Applicant is

equally willing to abide by any terms with respect to the issue of security for the due performance of the decree. 12. The upshot from the foregoing analysis is that the application dated 9/10/2025 is merited and granted in the following terms: 1. Stay of execution of the judgment and decree in Meru Small Claims Case No. E343/2025 dated 14/8/2025 is hereby granted, pending hearing and determination of this appeal, on condition that; i. The Applicant shall deposit the entire decretal sum of Ksh. 952,422 in a joint Advocates' interest earning account within 40 days from the date hereof. ii. The Applicant to compile, file and serve the Record of Appeal within 45 days from the date hereof. iii. In default of any of the aforementioned conditions, the stay hereinabove granted shall lapse, and the Respondent shall be at liberty to execute. iv. Cost be in the cause. DATED AND DELIVERED AT MERU THIS 16 TH DAY OF SEPTEMBER, 2026. S. M. GITHINJI – JUDGE 16/9/2026 In the Presence of:- Mr. Atheru for the Appellant. Mr. Koome for the Respondent.

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