



Muthondu v Murathi (Suing as the Legal Representative of the Estate of the Late Erick Kimathi Gitari) & another (Civil Appeal E021 of 2023) [2023] KEHC 25982 (KLR) (30 November 2023) (Ruling)

Neutral citation: [2023] KEHC 25982 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CIVIL APPEAL E021 OF 2023
EM MURIITHI, J
NOVEMBER 30, 2023**

BETWEEN

SAMWEL KIMANI MUTHONDU APPELLANT

AND

FRANCIS GITARI MURATHI (SUIING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE ERICK KIMATHI GITARI) 1ST RESPONDENT

LILY MUTHONI MVUNGU (SUIING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE ERICK KIMATHI GITARI) 2ND RESPONDENT

RULING

1. Upon considering the application for stay of execution herein and noting that there is consent on liability at 20:80 in favour of the Respondent, the court considers that a certain amount of the decretal sum is payable despite successful challenge on the quantum of Kshs 1,860,740/=.
2. The court considers that a payment of 1/3 of the decretal sum meets the balance of convenience test while not making the appeal, if successful, nugatory by reason of failure to recover any substantial payments made in the meantime.

ORDER

3. Accordingly, the court grants a stay of execution subject to the payment of Kshs 500,000/= to the Respondent within 30 days. In default, execution to issue.
4. Cost in the cause.

DATED AND DELIVERED THIS 30TH DAY OF NOVEMBER 2023.

EDWARD M. MURIITHI



JUDGE

Appearances:

Mr. L.W. Wang'ombe Advocate for the Appellant.

Mr. Muthomi Gitari Advocate for the Respondents.

