



Githaiga & another v King'ori (as the legal representative of the Estate of Lucas Kimiinda (Deceased)) (Civil Appeal E181 of 2021) [2022] KEHC 11584 (KLR) (26 May 2022) (Ruling)

Neutral citation: [2022] KEHC 11584 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E181 OF 2021**

MM KASANGO, J

MAY 26, 2022

BETWEEN

ALICE WANJIRU GITHAIGA 1ST APPELLANT

NGONG MUGUKU FARM LIMITED 2ND APPELLANT

AND

EUNICE KANUGU KING'ORI RESPONDENT

**AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF LUCAS KIMIINDA
(DECEASED)**

*((Appeal from the judgment of the Senior Principal Magistrate's
Court at Ruiru (J. Agonda, PM) dated 16th September, 2021))*

RULING

1. An appeal is fled herein against the judgment of Ruiru SPMCC No 64 of 2020 in favour of the respondent in this appeal. That judgment was for Kshs 1,129,625.70. The appellant filed notice of motion application dated October 15, 2021 seeking stay of execution of that decree.
2. In support of the application, 2nd appellant swore an affidavit and stated that the appellants are apprehensive that they would suffer irreparable loss if execution of the decree does proceed for they believe the respondent would be unable to refund the judgment amount in the event the appeal did succeed.
3. The above deposition was not denied nor responded to by the respondent. The resident filed grounds of opposition whereby she stated that the court should order the appellants to furnish the security for stay of execution which amounts can be deposited into joint interest earning account.



4. Orders 42 rule 6 of the *Civil Procedure Rules* sets out the standards upon which the court will grant stay of execution of decree pending appeal. That rule provides:-

“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.”

5. The respondent’s inclination to accept deposit of funds as condition for stay of execution is in tandem with the above Rule.

6. In view of the above, I order as follows in respect to the notice of motion dated October 15, 2021:-

(a) There shall be stay of execution pending the hearing and determination of this appeal of the decree in Ruiru SPMCC No 64 of 2020 on condition the appellants do provide the decretal sum in that matter within 30 days from today and the same be deposited into a joint interest earning account of the advocates in this appeal.

(b) The costs of the Notice of Motion shall abide with outcome of this appeal.

RULING DATED AND DELIVERED AT KIAMBU THIS 26TH DAY OF MAY, 2022.

MARY KASANGO

JUDGE

Coram:

Court assistant : Mourice

For appellant: - Mr. Njoroge

For respondent :- No appearance

RULING DELIVERED VIRTUALLY.

MARY KASANGO

JUDGE

