



Mayek v Nyambura & another (Suing as the Legal Representatives and Administrators of the Estate of Andre Mwanza Muindi - Deceased) (Civil Appeal E267 of 2022) [2022] KEHC 12574 (KLR) (Civ) (25 August 2022) (Ruling)

Neutral citation: [2022] KEHC 12574 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E267 OF 2022

JK SERGON, J

AUGUST 25, 2022

BETWEEN

GEOFFREY KIPLANGAT MAYEK APPELLANT

AND

CICILIA WANJIRU NYAMBURA 1ST RESPONDENT

TITUS KIMATU KAKITE 2ND RESPONDENT

**SUING AS THE LEGAL REPRESENTATIVES AND ADMINISTRATORS OF
THE ESTATE OF ANDRE MWANZA MUINDI - DECEASED**

RULING

- 1) The subject matter of this ruling is the motion dated May 19, 2022 taken out by the appellant whereof he sought for an order for stay of execution of the trial court's decree pending appeal. The appellant filed the affidavit sworn by Beatrice Muriithi in support of the motion. The respondent filed the replying affidavit sworn by Bernard M. Kitindio to oppose the application.
- 2) I have considered the grounds stated on the motion and the rival affidavits. The appellant averred that he preferred this appeal against the judgment delivered by the trial court in favour of the respondent.
- 3) He argued that if the judgment sum of Kshs 3,556,912/= is paid to the respondent the appellant may suffer substantial loss in that the respondent is not in a financial position to make a refund should the appeal turn successful. The appellant further offered to deposit the decretal sum as security for the due performance of the decree.
- 4) The respondents are of the submission that the appellant's motion does not meet the requirements for the grant of an order for stay of execution of the decree pending appeal. They further averred that



there is no demonstration on the part of the appellant that he would suffer substantial loss if the order of stay is not granted.

- 5) It is said that the appellant's sole intention in filing the instant motion is to frustrate and deny the respondents their right to enjoy the fruits of their judgment.
- 6) Having considered the rival averments, it is clear that the respondents have not controverted the appellant's assertion that if the decretal sum is paid to them, they will not be in a position to make a refund should the appeal turn successful. The respondents did not discharge the burden of showing that they are in a financial position to refund the decretal sum.
- 7) I am satisfied that the appellant has demonstrated the substantial loss he would suffer if the order for stay of execution is denied.
- 8) The judgment in this matter was delivered on April 4, 2022 and the appeal was filed on May 4, 2022 while the instant motion was filed on May 19, 2022. I am convinced that the application was filed without unreasonable delay.
- 9) In the end, I find the motion dated May 19, 2022 to be meritorious. The same is allowed. Consequently, an order for stay of execution of the decree of the trial court is granted pending appeal on condition that the appellant deposits the decretal in an interest earning account in the joint names of the advocates or firms of advocates appearing in this appeal within 45 days. In default, execution to issue. Costs of the motion to abide the outcome of the appeal.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 25TH DAY OF AUGUST, 2022.

.....

JK SERGON

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent

