



**Luasi Nabutola & another (Both suing as respective administratrix and administrator of the Estate of the late John Kahuha Mwangi) v Mary Wambui Kinyanjui & another (Civil Appeal E213 of 2022) [2022] KEHC 12453 (KLR) (Civ) (24 August 2022) (Ruling)**

Neutral citation: [2022] KEHC 12453 (KLR)

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

**CIVIL**

**CIVIL APPEAL E213 OF 2022**

**JK SERGON, J**

**AUGUST 24, 2022**

**BETWEEN**

**LUASI NABUTOLA ..... 1<sup>ST</sup> APPELLANT**

**REBECCA MWIKALI NABUTOLA ..... 2<sup>ND</sup> APPELLANT**

**BOTH SUING AS RESPECTIVE ADMINISTRATRIX AND ADMINISTRATOR  
OF THE ESTATE OF THE LATE JOHN KAHUHA MWANGI**

**AND**

**MARY WAMBUI KINYANJUI ..... 1<sup>ST</sup> RESPONDENT**

**WYCLIFFE MWANGI KANYINGI ..... 2<sup>ND</sup> RESPONDENT**

*(The 1st and 2nd appellants took out the motion dated June 9, 2022 in which they sought for inter alia an order for stay of execution of the trial court's decree pending appeal. ... on March 8, 2022 the trial magistrate gave judgment in the sum of Kshs 2,202,308/= in favour of the respondents and against the appellants.)*

**RULING**

1. The 1<sup>st</sup> and 2<sup>nd</sup> appellants took out the motion dated June 9, 2022 in which they sought for *inter alia* an order for stay of execution of the trial court's decree pending appeal. The appellants filed the affidavit sworn by Beatrice Muriithi in support of the motion. When served, the 1<sup>st</sup> and 2<sup>nd</sup> respondents filed grounds of opposition to resist the motion.
2. I have considered the grounds stated on the face of the motion and the facts deponed in the supporting affidavit plus the respondents' grounds of opposition. I have further considered the rival oral submissions of learned counsels.



3. It is the submission of the appellants that on March 8, 2022 the trial magistrate gave judgment in the sum of Kshs 2,202,308/= in favour of the respondents and against the appellants. Being aggrieved, the appellant preferred this appeal.
4. It is the averment of the appellants that since the temporary orders for stay issued by the trial court have lapsed, the respondents are likely to execute the decree to the utter detriment of the appellants. They aver that the respondents are not in a financial position to refund the decretal sum should the appeal turn successful since they are not persons of means. The appellants stated that they are ready to provide security for the due performance of the decree.
5. In response to the application, the respondents relied on the grounds of objection arguing that the appellants' motion is frivolous, vexatious and amounts to gross abuse of the court process since there is no meritorious substratum of the appeal.
6. The respondent pointed out that the appellants did not comply with the exparte order whereof they were ordered to deposit a sum of Kshs 1,000,000/= as a condition for a grant of a temporary order for stay.
7. The respondent further argued that the supporting affidavit dated June 8, 2022 was deponed before the motion dated June 9, 2022 hence it is invalid.
8. The principles to be considered in determining an application for stay are threefold. First, the application must be filed without unreasonable delay. In this matter, the judgment sought to be impugned was delivered on March 8, 2022 while the instant application was filed on June 9, 2022. It is apparent that there was a delay of about 3 months before the application could be filed. I find the delay not unreasonable.
9. The second consideration is whether the appellants would suffer substantial loss if the order for stay is denied. The appellants are emphatic that the respondents are incapable of refunding the decretal sum if the appeal succeeds. The respondents did not controvert the assertion neither did they discharge the burden of proving that they are in a financial position to make a refund should the appeal succeed. I am therefore convinced that the appellants would suffer substantial loss if the order for stay is denied.
10. The third principle is the provision of security for the due performance of the decree. I think the appellants should deposit the decretal sum.
11. In the end, I find the motion dated June 9, 2022 to be meritorious. It is allowed. Consequently, an order for stay of execution of the decree of the trial court is granted on condition that the appellants deposit the decretal sum of Ksh 2,202,308/= in court within 45 days. In default the order for stay shall automatically lapse and the respondents will be at liberty to execute. Costs of the motion to abide the outcome of the appeal.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS  
24<sup>TH</sup> DAY OF AUGUST, 2022.**

.....

**JK SERGON**

**JUDGE**

In the presence of:

..... for the applicant.

..... for the respondent.

