



**Wanjohi & another v Mbandi & another (suing as administrators of the Estate of Joseph Musyoka Masivi (Deceased)) (Civil Suit E482 of 2022) [2022] KEHC 14635 (KLR) (Civ) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14635 (KLR)

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

**CIVIL**

**CIVIL SUIT E482 OF 2022**

**JN MULWA, J**

**OCTOBER 27, 2022**

**BETWEEN**

**PETER WACHIRA WANJOHI ..... 1<sup>ST</sup> APPELLANT**

**DUNCAN MUSYOKA MUIA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**NYASIVI NGULI MBANDI ..... 1<sup>ST</sup> RESPONDENT**

**MARY NDUKU MULE ..... 2<sup>ND</sup> RESPONDENT**

**SUING AS ADMINISTRATORS OF THE ESTATE OF JOSEPH MUSYOKA MASIVI (DECEASED)**

**RULING**

1. I have considered the parties' affidavits for and in opposition to the application dated July 5, 2022; as well as the oral arguments tendered before me today.
2. The respondent is not opposed to the orders sought – for stay of execution pending hearing and the determination of the appeal, on condition that the decretal sum be deposited into a bank within 30 days. On the applicants' part, it is sought that the decretal sum be secured by a bank guarantee from Family Bank.
3. Order 42 rule 6 [Civil Procedure Rules](#) states conditions that a party must meet for stay orders pending appeal to be granted.



4. The decretal sum as at August 31, 2022 is stated as Kshs 3,038,340/-. This is a money decree, and ordinarily, a money decree would not cause substantial loss to the respondent. The only issue is whether the respondent if paid the said money would be able to repay it back if the appeal is successful.
5. The decree hereof arises from a fatal accident claim wherein the deceased was a passenger and therefore the issue of liability does not arise. The judgment was delivered by the trial court on the April 1, 2022.
6. Considering the memorandum of appeal as filed, it appears that the only dispute is on the quantum of damages, awarded by the trial court
7. In the circumstances, whereas the applicant has offered to provide a bank guarantee as security for the due performance of decree, and whereas a bank guarantee is sufficient security, I am not persuaded that, in the circumstances of this application a bank guarantee alone will be sufficient.
8. I therefore allow the application dated July 5, 2022 upon the applicant complying with the following conditions:
  1. That the applicant shall deposit 50% of the decretal sum into a joint interest earning account in the parties' Advocates names at Family Bank – any branch in Nairobi within 30 days;
  2. The balance (50%) to be secured by a bank guarantee, drawn from Family Bank in favour of the respondent, within 28 days from date of this ruling.
  3. In default of either (1) or (2) above, the stay orders shall lapse automatically.
  4. Costs of the application to the respondent.

**Orders accordingly.**

**DATED, DELIVERED AND SIGNED IN NAIROBI THIS 27<sup>TH</sup> DAY OF OCTOBER, 2022.**

**J. N. MULWA**

**JUDGE**

