



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYAMIRA**

**CIVIL APPEAL NO. E3 OF 2021**

**WILSON ONDICHO MBOGA.....APPELLANT**

**VERSUS**

**NICHOLAS MAINA ARISI & THOMAS MORARA ONDARI**

**(Suing as the Legal Administrators of the estate of**

**ALICE KWAMBOKA (Deceased).....RESPONDENTS**

*{Being an appeal against the Judgement of Hon. W. C. Waswa (Mr.) – RM Nyamira*

*dated and delivered on the 18<sup>th</sup> day of December 2020 in the original Nyamira*

*Chief Magistrate's Court Civil Case No. 189 of 208}*

**RULING**

This is a ruling on the appellant's application in the Notice of Motion dated 15<sup>th</sup> February 2021, filed herein on even date, seeking a stay of execution pending hearing and determination of this appeal. The application is brought under Order 42 Rule 6 of the Civil Procedure Rules.

The application was heard by way of written submissions. I have considered the rival submissions carefully. **Order 42 Rule 6 of the Civil Procedure Rules** provides that an application for an order for stay of execution must fulfill the following conditions: -

- **That substantial loss may result unless the order is made.**
- **That the application has been made without unreasonable delay.**
- **That the applicant is willing to deposit such security as the court shall order for the due performance of such decree as may ultimately be binding on him.**

Applying the above provisions to this application I am satisfied that the same meets the criteria for grant of the order sought. The award which is the subject of the appeal is a substantial amount. The applicant having *prima facie* demonstrated that the respondent would not be in a position to refund the same, the respondents have not offered any evidence to rebut the allegation that their financial means are unknown. I also have no difficulty in making a finding that the application was made timeously.

Accordingly, the application is granted but on a condition that the appellant/applicant shall within 21 days of this ruling deposit the entire decretal sum either in court or in an interest earning account in the joint names of the Advocates on either side. The applicant shall also bear the costs of the application. It is so ordered.

**Ruling signed, dated and delivered in Nyamira (Electronically via Microsoft Teams) this 27<sup>th</sup> day of May 2021.**

**E. N. MAINA**

**JUDGE**