



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL DIVISION**  
**CIVIL APPEAL NO 184 OF 2014**

**DANIEL NDERITU .....APPELLANT**

**VERSUS**

**1. RACHEL NJERI KIMANI**

**(Legal representative of**

**Isaac Kimani Mwangi, Deceased)**

**2. JOHN MWANGI MUTHONI.....RESPONDENTS**

**R U L I N G**

1. The appeal herein is against quantum only. It is a money decree. KShs 1.6 million-odd was awarded by the lower court plus costs and interest.
2. The Appellant has now sought by notice of **motion dated 29<sup>th</sup> May 2014** stay of execution of the decree pending disposal of his appeal. That application is the subject of this ruling. It is brought under **Order 42, rule 6** of the **Civil Procedure Rules, 2010** (the **Rules**).
3. Grounds for the application appearing on the face thereof and also in the supporting affidavit include the averment that the Respondents have “no known stable means of income” and hence the likelihood that the Appellant will not recover the decretal sum in the event that he succeeds in his appeal; that there has not been any unreasonable delay in applying; and that the Appellant is ready to give security as the court might order.
4. The Respondents have opposed the application by replying affidavit filed on 11<sup>th</sup> June 2014. It is sworn by the 1<sup>st</sup> Respondent. Points taken include that the Respondents are of “stable means of income” as they run various businesses in Kiambu and Nairobi and will be able to pay back the decretal sum in the event that the appeal succeeds. In the alternative the Respondents are prepared to concede the application if KShs 600,000/00 is paid to them forthwith towards the decretal sum and the balance deposited in a joint interest-earning account pending disposal of the appeal. Apparently the Appellant had expressed this figure in a letter written by his advocates to be the proper damages due to the Respondents.
5. Learned counsels for the parties submitted along the lines set out above. I have considered those submissions together with the cases cited.

6. As already noted, the appeal is against quantum only. That is to say that the Appellant concedes that the Respondents are entitled to damages, the only issue being the quantum thereof. By his own assessment the Appellant says that those damages ought to be KShs 600,000/00 and not as assessed by the court. In their replying affidavit the Respondents have stated, in effect, that they will concede the application if KShs 600,000/00 is paid to them immediately and the balance of the decretal sum deposited in a joint interest-earning account.

7. In these circumstances I will order as follows in the interest of justice –

(a) There shall be stay of execution of decree pending disposal of the appeal upon the following conditions:

- i. The Appellant shall pay to the Respondents within fourteen (14) days of delivery of this ruling the sum of KShs 600,000/00 towards the decretal sum.
- ii. The Appellant shall deposit in court within twenty-one (21) days of delivery of this ruling the balance of the decretal sum (for purposes of this order calculated at KShs 1,200,000/00). This sum may subsequently be released to a joint interest-earning account in the names of the advocates for the parties on record which they are at liberty to open.
- iii. In default of (i) or (ii) above the stay of execution of decree now granted shall forthwith stand vacated, and the Respondents shall be at liberty to execute.

(b) Costs of the application shall be in the appeal.

8. Those will be the orders of the court.

**DATED AND SIGNED AT NAIROBI THIS 21<sup>ST</sup> DAY OF OCTOBER 2014**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF OCTOBER 2014**