



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CIVIL APPEAL NO. 125 OF 2009

PATRICK MUNYINGI..... APPELLANT

VERSUS

STEPHEN GITHINJI KARANJA..... RESPONDENT

(Appeal arising from the judgment of Nyeri CMCC No. 132

of 2008 by Principal Magistrate Hon. J. Kiarie)

RULING

Stephen Githinji Karanja, the Respondent/applicant herein, took out the motion dated 10th May 2011 in which he sought for the following orders

1. ***That this application be certified as urgent and be heard on priority basis.***
2. ***That the appeal herein has abated.***
3. ***That the decretal sum plus the accrued interest held at Family Bank – Nyeri account no. 55560375101 in the joint names of WAKINI KIARIE & CO. ADVOCATES and GACHIRI KARIUKI & CO. ADVOCATES be released to GACHIRI KARIUKI & CO. ADVOCATES forthwith.***
4. ***That the costs of this application and the abated appeal be awarded to the Respondent/Applicant.***

The applicant filed an affidavit he swore to support the motion. Patrick Munyingi, the Appellant/Respondent filed grounds of opposition to resist the motion.

It is the submission of the Respondent/Applicant that since the appeal has abated, then the amount deposited in a joint interest earning account should be ordered released to him via his advocate. The Appellant's counsel was of the view that the motion is frivolous and without merit.

I have considered the grounds set out on the face of the motion and the facts deponed in the supporting affidavit plus the grounds of opposition. Mr. Kangata learned advocate for the Respondent, was of the view that if the money is released, then section 45 of the Law of Succession Act will have been breached in that the estate assets will have been intermeddled. It is also argued there is no evidence that the appeal has abated. I have carefully considered the oral submissions of learned counsels from both sides. The facts leading the filing of this motion appear to be short and straightforward. The Respondent

was involved in a road traffic accident while on board the appellant's motor vehicle. The Respondent filed a compensatory suit vide Nyeri S.P.M.C.C.C. no. 132 of 2008. The suit was heard and determined on 27th October 2009. The Respondent was awarded Ksh. 600,000/= as damages for the injuries he suffered as a result of the accident. The Appellant was dissatisfied hence he filed this appeal. He applied for an order of stay of execution pending appeal. The order was granted on condition that the appellant deposits the decretal sum of Ksh. 708,751/= in an interest earning account in the joint names of the Advocates on record. The Appellant complied with the condition and a sum of Ksh. 708,751/= was deposited in account no. 55560375101 with Family Bank, Nyeri. It is also not in dispute that the Appellant passed away on 22nd February 2010. The Respondent has urged this court to declare that the Appeal has abated hence the deposit should be released to him. The law is clear that an action or suit will abate at the lapse of 1 year before the deceased is substituted. It is obvious that the appeal abated by operation of law as of 23rd February 2011. The order for stay was given to last pending appeal. The appeal having abated, there is no need to maintain the deposit. The question is whether or not I should order for the deposit plus interest to be released to the Respondent? The answer in my view is simple. The condition to give security is to make sure that the decree holder at the end of the appeal can easily access the security to satisfy the decree. It is not in dispute that the decretal sum at the time of granting the order of stay was Ksh. 708,751/=. I find the request to be plausible. I grant the order as prayed in prayer 3 of motion dated 10th May 2011. I also award the Respondent costs of the motion.

Dated and delivered this 14th day of October 2011.

J.K. SERGON
JUDGE

In open court in the presence of Mr. Gacheru h/b for Wakini Kiarie for Respondent. No appearance for Appellant.

J.K. SERGON
JUDGE