



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

**Civil Case 2152 of 2000**

1. Civil Division of the High Court of Kenya at Nairobi
2. Running Down Cause: Civil practice and Procedure
  - a) Motor vehicle collision between two vehicles
  - b) Male adult aged 38 years in 1999
  - c) Award under Law Reform and Fatal Accidents Act Ksh.8,350,100/-
3. Application dated 5.10.07
  - a) Stay of execution

Reasons: - plaintiff/respondent would not be able to repay money if defendant successful in appeal to the court of appeal

4. Reply: The defendants are well propertied.
5. Held: As per Platt,JA

“It is not normal in money decrees for the appeal to be rendered nugatory if payment is made”.

6. Case law by court
  - a) Kenya Shell Ltd v Benjamin Karuga Kiburu & Other  
(1982-88) I KAR 1018

7. Advocates:

B. N. Ngugi of Mwaniki Gachomo & Co. Advocates for the plaintiffs/Respondents – present

D. Mwaura of Mboya & Wangogu & Co. Advocates for the defendant/applicant - present

**DORIS NYAGUTHI MUHINDI ..... 1<sup>ST</sup> PLAINTIFF**

**SAMUEL MAINA KIRUTHU ..... 2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**KARIUKI KARANU KAGO ..... 1<sup>ST</sup> DEFENDANT**

**BARUA ESTATE LINTIED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1: Background

1. On the 1 February 2007, I delivered a judgment in favour of the two plaintiffs respondent who had sued the defendants applicant herein in Tort for the negligent cause of death to the late Charles Muhindi Kiruthu.

2. This court awarded under the Law Reform Act Ksh.75,000/- and under the Fatal Accidents Act Ksh.8,350,100/- whereby the discount had been taken into account.

3. The deceased passed away as a result of a motor vehicle collision between his vehicle and that of the defendants along the Tigon/Banana hill road in the Limuru area of Kenya.

4. The plaintiff went for taxation in October 2007. The defendants filed the present application for stay of execution of this courts judgment.

II: Application dated 5 October 2007.

5. The applicant/defendant argued that being dissatisfied with the decision of this court they have since filed an appeal to the court of appeal. This appeal would be rendered nugatory if per chance the defendants are successful in their appeal. A Memorandum of Appeal was annexed to their application. This showed that the appeal against the Fatal Accidents Act against the multiplicand of Ksh.70,000/- award by (income) x 15 years (that the deceased may have lived) x 2/3 and less 50,000/- discount giving = Ksh.8.350,000/- was erroneously arrived as they argued.

6. An appeal to the court of appeal should first be heard before this sum is paid out. If the sum is paid out the plaintiff would not be able to make a refund.

7. The respondent/plaintiff argued that they were propertied people and had in effect means to repay the sums back. They annexed to their replying affidavit the properties that they arrived. They also brought to the courts attention that two of the dependants are minors and their portion of entitlement would nonetheless have to be invested till the minor aged 18 years. They prayed that the application be dismissed.

III: Finding

8. In the case law of

Kenya Shell Ltd V Benjamin Karuga Kibiru & Another

(1982 – 88) I KAR 1018 (Hancox report).

The High Court had “awarded damages of ksh.201,380/- and 5,000/- to the two respondents (who were husband and wife) respectively on the grounds of the applicants negligence.” The applicant applied for stay of execution pending appeal. This was rejected. The applicants applied to the court of appeal for stay of execution under Rule 5 (2) of the court of appeal.

9. The above case used the same arguments as did the applicants in this application, namely that if the sums of money are paid to the respondent would be “very difficult to get the money back if the intended

appeal were successful.” The appeal would be “rendered nugatory”.

10. The respondents in the above cause argued that the 1<sup>st</sup> respondent was employed and was in a position of to repay back the said sum of money.

11. It was held in the above authority that the court must first consider whether the appeal would be rendered nugatory if payment of the decretal sum is paid to the respondents.

12. It was also held inter alia as per Platt Ag JA. That it was “not normal in money decrees for the appeal to be rendered nugatory if payment is made.”

13. In this present application, the two respondents have demonstrated that the sum of Ksh.8,350,000/- is to be apportioned amongst the beneficiaries/dependants of the deceased. The widow was awarded Ksh.1,350,000/-. She has deponed she holds property worth over this sum namely Ksh.2.5 m. and is in the position to pay back this sum. The balance of 7 million was divided equally between the two minors aged 12 years, 4 years old respectively. This sum is to be invested and the minors nor the administration are permitted to touch this money till the two minors attain the age of majority which in Kenya is 18 years. Nonetheless the 2<sup>nd</sup> plaintiff demonstrated that he too has property to secure the said sum.

#### IV) Holdings.

12. I hereby hold that the application for stay of execution has no merits and is hereby rejected and dismissed with costs to the respondents/plaintiffs.

Dated this 31<sup>st</sup> day of October 2007 at Nairobi.

M.A. ANG’AWA

JUDGE

B. N. Ngugi of Mwaniki Gachomo & Co. Advocates for the plaintiffs/Respondents – present

D. Mwaura of Mboya & Wangogu & Co. Advocates for the defendant/applicant - present