



REPUBLIC OF KENYA



**Kisilu & another v Kanyiri (Civil Appeal E001 of 2025)
[2025] KEHC 2044 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2044 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E001 OF 2025
EM MURIITHI, J
FEBRUARY 13, 2025**

BETWEEN

BENSON KYALO KISILU 1ST APPELLANT

SAMUEL KINYUA KARIUKI 2ND APPELLANT

AND

CYRUS KANYEKI KANYIRI RESPONDENT

RULING

1. The applicant filed a notice of motion via a certificate of urgency dated 13th January, 2025 seeking the following orders:
 1. “Spent.
 2. Spent.
 3. That this Honourable Court be pleased to grant a stay of execution of the Judgment and/or Decree delivered by the Subordinate Court on the 6th day of December, 2024 vide Baricho SPMCC No. E103 of 2021 together with all consequential orders arising therefrom pending the full hearing and determination of this Appeal.
 4. That this Honourable Court allow the Applicant to furnish the Court with security in the form of a Bank Guarantee from the Family Bank.
 5. That the costs of this application abide the outcome of the appeal.”
2. The facts of the case relied on by the applicant are set out in the supporting affidavit of Samuel Kinyua Kariuki that that being aggrieved by the decision of the Court in Baricho SPMCC No. E103 of 2021 delivered on 6th December, 2024 and have since lodged an appeal challenging the judgment and decree of the trial Court, which allowed the Respondents’ personal injury suit arising from a motor accident



claim and awarded him a sum of Kshs.350,000/-as General Damages for Pain and Suffering as well as Kshs53,550 Special Damages.

3. The appellants fear that upon expiry of the 30 days stay of execution the Respondents shall commence execution proceedings against the Appellants/Applicants in before the hearing and determination of an appeal which they contend is an arguable appeal with high chances of success and challenge Respondent's proof of liability against the Appellants.
4. By way of security for the due performance of any decree as may become binding upon hearing and determination of the appeal, the Appellants offer to furnish the court with a bank guarantee from Family Bank by the relevant insurance company M/S Directline Assurance Limited.
5. The respondents filed a Replying Affidavit of 24/1/2025 and urged that the applicant had not established any substantial loss; the Respondent is able to refund the decretal sum if the appellant is successful on appeal; and that no security had been offered as the Guarantee by Family Bank was to run for 12 months expiring on 7/7/2024 and there was therefore no bank guarantee as of today. It was urged that the court should balance the interests of the parties and seek a fair outcome where the appellant pays $\frac{1}{2}$ the decretal sum and deposits the $\frac{1}{2}$ awaiting the appeal.
6. The Court has considered the principles guiding the grant of a stay of execution pending appeal which are well settled and provided for under Order 42 rule 6(2) of the Civil Procedure Rules, namely that the court is satisfied that substantial loss may result to the applicant unless the order is made; that the application has been made without unreasonable delay; and such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
7. I should agree that the applicant has not shown that he is likely to suffer substantial loss unless the order is made because it has not been demonstrated that the respondent is a man of straw as to provide a basis to reasonably fear that the Respondent be unable to refund the amounts paid out in execution as to render their appeal nugatory, and cause them to suffer irreparable loss and damage.
8. As regards the security, the financial health of the relevant insurance company has not been demonstrated, bearing in mind the point taken up by the respondent that the period of validity of the Bank Guarantee would appear to have lapsed.
9. In balancing the rights of the respondent as the successful party to enjoy the fruits of his judgement and the right of appellant to pursue his undoubted right of appeal, which appeal cannot be said to be frivolous, and to put his challenge on the finding on proof of liability before the appellate court, and there being no unexplained unreasonable delay, the Court is persuaded to make an order for stay of execution in discretion.
10. The Court shall, consequently, direct that the grant of stay of execution pending appeal shall be conditional upon the payment of Kenya Shillings one hundred and thirty (Ksh.130,000/-), approximating one third (1/3) of the decretal sum to the respondent and the deposit of the balance of the decretal sum in an joint interest earning account in the names of the Advocates for the parties within forty (45) days, in default of either of which the stay herein granted shall lapsed and be of no effect.

Orders

11. Accordingly, for the reasons set out above, this court finds that the relief sought in the application dated 13/1/2025 is merited and is granted upon the following terms:



1. The Court grants an order for stay of execution of the Judgment and/or Decree delivered by the Subordinate Court on the 6th day of December, 2024 vide Baricho SPMCC No. E103 of 2021 together with all consequential orders arising therefrom pending the full hearing and determination of this Appeal.
 2. The grant of stay of execution is conditional upon the payment to the Respondent within thirty (30) days the sum of Ksh.130,000/= and the deposit within the same period in an interest-earning joint account in the names of the advocates for the appellant and the respondents.
 3. The Record of Appeal shall be filed within thirty (30) days.
 4. In default of any of the above provisions, the stay of execution granted herein shall lapse and be of no effect.
12. The costs of the application shall abide the outcome of the appeal.

Order accordingly.

DATED AND DELIVERED THIS 13TH DAY OF FEBRUARY, 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Kipngetich for the Appellant

Mr. Mutua for the Respondent.

