



REPUBLIC OF KENYA



**Odhiambo & another v Otieno (Civil Appeal E014 of 2023)
[2025] KEHC 6724 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 6724 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CIVIL APPEAL E014 OF 2023
A. ONG'INJO, J
FEBRUARY 13, 2025**

BETWEEN

HILLARY ODHIAMBO 1ST APPLICANT

GEORGE OTIENO 2ND APPLICANT

AND

BEATRICE AOKO OTIENO RESPONDENT

RULING

1. By way of a Notice of motion dated 20th November 2024, the applicant seeking for the following orders that: -
 - i. Spent
 - ii. This Honourable court be pleased to grant stay of execution of the judgment and decree in Migori CMCC No. 188 of 2019; Beatrice Aoko Otieno vs Hillary Odhiambo and George Otieno pending hearing and determination of this application.
 - iii. This Honourable court be pleased to grant stay of proceeding in declaratory suit being Migori Civil Case No. E167 of 2023 Beatrice Aoko vs Directline Insurance Co. Ltd pending hearing and determination of this application.
 - iv. The Honourable court be pleased to review orders of dismissal issued on 18th September 2024 and reinstate the Applicant's application dated 13th August 2024 for hearing and determination.
 - v. Costs of this application be in the cause.
2. The application is premised on the grounds on its face and supported by the sworn affidavit of Everlyne Okwoyo of even date.



3. In response, the Respondent filed a Notice of preliminary objection dated 16th December 2024. In the said objection the Respondent raises the grounds that the application has been brought in disregard to the mandatory provision of Section 7 of the *Civil Procedure Act*.
4. As this court was in the process of writing this ruling and upon checking on the CTS, I noticed the Applicants had filed a notice of withdrawal of the application dated 20th November 2024. The notice of withdrawal is dated 15th January 2025.
5. In the circumstances, this application is marked as withdrawn. In view of the fact that the Respondent filed a notice of preliminary objection together with written submissions, this court proceeds to award the Respondent costs of the withdrawal of the application.

Orders accordingly

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

A. ONGINJO

JUDGE

