



REPUBLIC OF KENYA



KENYA LAW
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**Kariuki v Kugwa (Civil Appeal 164 of 2020)
[2025] KEHC 2670 (KLR) (Civ) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2670 (KLR)

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

CIVIL

CIVIL APPEAL 164 OF 2020

JN MULWA, J

MARCH 6, 2025

BETWEEN

STEPHEN NJOROGE KARIUKI APPLICANT

AND

WAHINYA KUGWA RESPONDENT

RULING

1. By a motion dated 22/5/2024, brought under provisions of Order 42 Rule 6 and Order 51 of Civil Procedure Rules as well Article 159 of *the Constitution* of Kenya 2010, the Applicant sought ORDERS:-
 1. Spent
 2. That this Honourable Court Stay and or set aside judgment entered and delivered in this matter on 17/5/2024 in favour of the respondent pending hearing and determination of this application and the intended appeal.
 3. That the Respondents, its agents, servants employees be restrained by an order of this Honourable Court from interfering transferring and or dealing in any manner with the joint account of the Applicant and the Respondent counsel in Equity Bank account number 0470180278201 deposited by the applicant as security pending hearing and determination of the intended appeal.
 4. Cost of this application be in the cause.
2. The motion is supported by an affidavit sworn on 22/5/2024 by the Applicant and grounds stated thereon.



3. The Applicant deposes that being dissatisfied with the trial court decision, he filed the instant appeal and that the same is arguable with high chances of success; that for security, there is already deposited in a joint account of both parties advocates names and therefore no prejudice will be occasioned to any of the parties.
4. The Applicant therefore prays that the orders he seeks be granted.
5. In opposing the application , the Respondent filed a replying affidavit sworn by the Respondent on 26/7/2024 stating that the application is misconceived and an abuse of court process, in that the decision of the court dated 17/5/2024 being negative further states that no substantial loss has been demonstrated by the applicant to warrant the orders sought.
6. The court notes that a Notice of Appeal to the Court of Appeal has been filed, and that there is a deposit made by the Applicant in a joint account of the parties Advocates.
7. Order 42 rule 6 of the civil procedure rules provides that a party seeking a stay order must satisfy the court of three requirements; that the application has been brought without undue delay; that the applicant will suffer substantial loss if the stay orders are denied and, security for the due performance of the decree has been provided as ably stated in the case of Elena D. Korir v Kenyatta University
8. The court is satisfied that the application was filed without any delay, and that performance of the decree is secured by the deposit already provided by the applicant. A sum of Kshs. 200,000/= was deposited in the interest earning account as aforesated by an order dated 14/10/2022. The trial court judgment decree was a money decree. See case of Masisi Mwita v Damaris Wajiku Njeri (2016) eKLR.
9. Additionally this court has perused the judgment of the trial court. An award of general damages were awarded to the applicant at Kshs. 400,000/= out of which 50% was deposited in the joint account. In the circumstances therefore, the court is of the considered opinion that the balance thereof Kshs. 200,000/= be released to the Respondent who has been denied enjoyment of the same for a very long time as the applicant processes the appeal at the Court of Appeal.
10. In the end, the Application dated 22/5/2024 succeeds partially as hereunder:

An order of stay of execution of the judgment and decree of the trial court is hereby issued pending hearing and determination of the intended appeal UPON the Applicant Stephen Njoroge Kariuki paying to the Respondent through his Advocates on record Macharia Gakaria & Associates Advocates a sum of Kshs. 200,000/= within 30days of this ruling.

In shall default the stay orders lapse automatically.

Each party shall bear own costs on the application.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 6TH DAY OF MARCH 2025.

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JANET MULWA.
JUDGE

