



REPUBLIC OF KENYA



**Kamau v Ahinga & 4 others (Civil Appeal E562 of 2022)
[2025] KEHC 6105 (KLR) (Civ) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 6105 (KLR)

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

CIVIL

CIVIL APPEAL E562 OF 2022

TW CHERERE, J

APRIL 24, 2025

BETWEEN

STEPHEN KIMANI KAMAU APPELLANT

AND

THOMAS OUMA AHINGA 1ST RESPONDENT

ARTHUR KANAI KAMAU 2ND RESPONDENT

BEATRICE NGONYO KAMAU 3RD RESPONDENT

**MARIA NDUKU KAMAU (SUING AS THE ADMINISTRATOR OF THE
ESTATE OF RICHARD S KAMAU) 4TH RESPONDENT**

REHEMA KAMAU 5TH RESPONDENT

RULING

1. The factual background in this matter is not in dispute. By judgment delivered on 08th July 2022 in Nairobi CMCC No. 6193 of 2012, the trial court entered judgment in favour of the 1st Respondent against the Appellant for KES. 6,532,000.
2. Aggrieved by that decision, the Appellant filed the present appeal. On 27th July 2022, the Appellant also filed a motion seeking stay of execution of the judgment.
3. By an interim order of this Court, stay was granted on condition that the Appellant deposits KES. 3,000,000 into Court by 24th August 2022. The Appellant complied and deposited the amount on 29th September 2022.
4. The appeal was ultimately heard and dismissed by this Court on 31st October 2024, with costs to the Respondents.



5. The 1st Respondent has now moved this Court by a notice of motion dated 25th February 2025, brought under Section 3A of the *Civil Procedure Act* and Order 51 of the *Civil Procedure Rules*, seeking an order for release of security deposited in court to Nzamba Kitonga Advocates LLP, being part satisfaction of the judgment sum.
6. The application is supported by the affidavit of Eric John Mutemi, learned counsel for the 1st Respondent, who avers that it is only fair and just for the sum to be released now that the appeal has been dismissed.
7. The Appellant opposes the application via a replying affidavit sworn on 08th April 2025, stating that he is aggrieved by this court's judgment and has filed a notice of appeal as well as COACAPPL E246 of 2025 in the Court of Appeal, where he is seeking a stay of execution of this Court's decision.
8. I have carefully considered the notice of motion in light of the court record, the affidavits and annexures thereto and I have identified the following issues for determination.:
 1. Whether the filing of a notice of appeal and an application for stay before the Court of Appeal operates as an automatic stay of this Court's judgment.
 2. Whether it is just and equitable to grant the orders sought.
 3. Who bears the costs

1. On whether the notice of appeal operates as an automatic stay

9. It is trite law that the mere filing of a notice of appeal does not, by itself, operate as a stay of execution. The Court of Appeal in *Equity Bank Ltd v West Link MBO Ltd* [2013] eKLR affirmed that once a notice of appeal is lodged, an appeal is deemed to exist; however, that in itself does not suspend the execution of the judgment or decree appealed from.
10. This position is clearly reflected in Order 42 Rule 6(1) of the Civil Procedure Rules, which provides:

“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order...”

2. On whether justice demands the release of the KES. 3,000,000 to 1st Respondent's advocate

11. The sum of KES. 3,000,000 was deposited solely for purposes of obtaining a temporary stay during the pendency of the appeal.
12. It is trite that the purpose of a conditional stay pending appeal is to preserve the fruits of the judgment for the successful litigant should the appeal fail. In *Kenya Shell Ltd v Benjamin Karuga Kibiru & Another* [1986] KLR 410, the Court emphasized that a successful party should not be deprived of the fruits of judgment except for good cause. This principle was reiterated in *Tabro Transporters Ltd v Absalom Dova Lumbasi* [2012] eKLR, where the court stated that “security is meant to be a cushion to the successful litigant.
13. The law leans heavily in favour of upholding the rights of a successful litigant to enjoy the fruits of their judgment. The appeal having been dismissed, and no stay of execution being in force, the 1st Respondent is entitled to the release of the deposited sum held as security.



3. Who bears the costs

14. Section 27(1) of the *Civil Procedure Act* vests the court with discretion to determine the award of costs, guided by the principle that costs follow the event. A successful litigant ought not to be deprived of costs except for good reason. This was the holding in *Farah Awad Gullet v CMC Motors Group Limited* [2018] KECA 158 (KLR), where the Court of Appeal reiterated that:

“The award of costs is a matter of judicial discretion, but a successful party should not be denied costs without justification.”

Disposition

14. Accordingly, I make the following orders:

1. The application dated 25th February 2025 is allowed.
2. The Court directs the release of KES. 3,000,000 deposited in Court to the 1st Respondent through Nzamba Kitonga Advocates LLP.
3. The costs of this application shall be borne by the Appellant.

It is so ordered.

DELIVERED AT NAIROBI THIS 24th DAY OF April 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Ubah

For Appellant - Mr. Omulanya for P.M.Kithuka & Co. Advocates

For 1st Respondent - Mr. Mutemi for Nzamba Kitonga Advocates LLP

For 2nd to 5th Respondents - N/A for Njeri Onyango & Co. Advocates

