



Directline Assurance Company Limited v Kitwe & another (Suing as Administrators ad litem of the Estate of Moses Ndunda - Deceased) & another (Civil Appeal E453 of 2022) [2025] KEHC 12184 (KLR) (Civ) (15 May 2025) (Ruling)

Neutral citation: [2025] KEHC 12184 (KLR)

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

CIVIL

CIVIL APPEAL E453 OF 2022

TW CHERERE, J

MAY 15, 2025

BETWEEN

DIRECTLINE ASSURANCE COMPANY LIMITED APPELLANT

AND

ALICE NDIINGA KITWE & DOUGLAS KITONGA (SUING AS ADMINISTRATORS AD LITEM OF THE ESTATE OF MOSES NDUNDA - DECEASED) 1ST RESPONDENT

FIRST ASSURANCE COMPANY LIMITED 2ND RESPONDENT

RULING

“Litigation must come to an end, and when it does, the fruits of justice must not be withheld from the successful party without just cause.”

1. The application before the court is the Appellant’s Notice of Motion dated 8th November 2025 seeking the release of the sum of KES. 500,000 deposited in court as security for the due performance of the judgment and decree in the trial court.
2. The motion is premised on Article 159(2)(d) of the *Constitution*, Sections 1A, 1B and 3A of the *Civil Procedure Act*, and Order 51 Rule 1 of the *Civil Procedure Rules*. It is supported by the affidavit of Kevin Nguni, Deputy Claims Manager of the Appellant, sworn on even date.
3. The record demonstrates that pursuant to this court’s order dated 29th July 2022, the Appellant was directed to deposit security in the sum of KES. 500,000 pending the hearing and determination of the appeal. The Appellant duly complied by depositing the said sum on 25th August 2024, as evidenced by the bank slip annexed and marked PW-2.



4. Subsequently, the appeal was heard and judgment delivered on 24th June 2024, wherein the appeal was upheld, and it was directed that each party bears its own costs.
5. Despite service, the Respondents neither filed a response to the application nor appeared during the hearing.

Issues for determination

6. From the record and the supporting affidavit, the only issue that falls for determination is whether the Appellant is entitled to a refund of the security deposit following the judgment of the appellate court.

Analysis and determination

7. It is not in dispute that the Appellant deposited the sum of KES. 500,000 in compliance with the order of this court made on 29th July 2022. The deposit was intended to secure the due performance of the decree in the event the appeal did not succeed. The appeal was successful and the decree of the trial court was thus displaced.

8. The Court of Appeal in *Equity Bank Limited v West Link Mbo Ltd* [2013] eKLR observed as follows:

“The purpose of an order for security for costs is to protect a successful party against the risks of non-payment of costs by the unsuccessful party. The money is deposited as security for the eventuality that the appeal may not succeed. Once the appeal succeeds, and there is no order for costs against the appellant, then the security deposit is to be released back to the appellant. The court cannot continue to hold on to the money when the reason for its being deposited no longer exists.”

10. Similarly, in *Kenya Shell Limited v Benjamin Karuga Kibiru & Another* [1986] eKLR, the Court of Appeal reaffirmed the principle thus:

“It is not normal in civil proceedings for security to be given for the satisfaction of a money decree before it is issued. Nor is it normal for a successful party to be deprived of the fruits of a judgment in his favour without very good reason... Security is not meant to punish the appellant but to protect the respondent and should be refunded once it is no longer necessary.”

11. These decisions reflect the consistent view that once the rationale for depositing security falls away, and there is no prevailing decree or order against a depositor, the court is duty-bound to order restitution.
12. The Respondents, despite being served, did not file any response to the application nor appear at the hearing to oppose it. No reason has been advanced to justify the continued withholding of the funds.
13. Accordingly, the court finds no lawful basis to continue holding the security amount for to do so would be contrary to the principles of justice and efficiency underpinning Sections 1A and 1B of the *Civil Procedure Act* and Article 159(2)(d) of the *Constitution*.
14. In the result, the Notice of Motion dated 08th November 2025 is allowed and it is hereby ordered that:
 1. The sum of KES. 500,000 deposited in court as security be released forthwith to the Appellant’s advocates on record
 2. There shall be no order as to costs

DELIVERED AT NAIROBI THIS 15th DAY OF May 2025



WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Mr. Abdirizack

For Appellant - Ms. Omollo for COWTOW & Associates

For 1st Respondent - N/A for Nelson Kaburu & Co. Advocates

For 2nd Respondent - N/A for Shapley Barret & Co. Advocates

