



**Kimani (Suing on Her Behalf and on Behalf of the Estate of Daniel Jonah Kimani - Deceased)
v Kinyua (Civil Case E037 of 2024) [2025] KEHC 6600 (KLR) (Civ) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6600 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CIVIL
CIVIL CASE E037 OF 2024
KW KIARIE, J
MAY 22, 2025**

BETWEEN

VERONICA WANJIRU KIMANI APPELLANT

**SUING ON HER BEHALF AND ON BEHALF OF THE ESTATE OF DANIEL
JONAH KIMANI - DECEASED**

AND

CHARLES KINYUA RESPONDENT

RULING

1. Veronica Wanjiru Kimani, the applicant, brought an application through a Notice of Motion. dated the 19th day of March 2025. It was brought under sections 1A, 1B and 3A of the *Civil Procedure Act*, Order 42 Rule 6 & Order 51 Rule 1 of the *Civil Procedure Rules*. She is seeking the following orders:
 - a. That there be an interim stay of execution of the decree issued on 24th February, 2025, in Olkalou SPMCC No. E085 of 2023 *Charles Kinyua v Veronica Wanjiru Kimani* Pending the hearing determination of this application inter partes.
 - b. That there be a stay of execution of the decree issued on 24th February, 2025, in Olkalou SPMCC No. E085 of 2023 *Charles Kinyua v Veronica Wanjiru Kimani* pending the hearing determination of the appeal herein.
 - c. That the honourable court be pleased to grant any further and/or other order which is just and fair in the circumstances hereof.
 - d. That the costs be in the cause.
2. The application was premised on the following grounds:



- a. That judgment herein was delivered on 20th November 2024.
 - b. That a decree was issued on 24th February, 2025.
 - c. That the appellant has filed an appeal from the judgment to this honourable court and is apprehensive that the decree may be executed as there is no order for stay of execution in place at the moment.
 - d. That the appeal has high chances of success and will be rendered nugatory unless stay orders are issued.
3. The respondent opposed the application and raised the following grounds:
- a. The application is bad in law, baseless, malicious, vexatious and a gross abuse of the court process.
 - b. That judgment in Olkalou M.C.C.C. No. E085 of 2023, from which this appeal emanates, was delivered on 20th November, 2024.
 - c. The delay in filing this instant application has not been explained at all.
 - d. That the instant application is meant to frustrate the respondent from enjoying the fruits of a lawfully obtained judgment.
 - e. That in the event this application is granted, the decretal sum should be deposited in court or in a joint interest-earning account.
4. It is trite law that an appeal does not operate as a stay for execution. Order 42 Rule 6 of the [Civil Procedure Rules](#) states as follows:
- (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the court appealed from may order but, the Court Appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
5. In the case of [RWW v EKW](#) [2019] eKLR, the court, while addressing its mind to the purpose of a stay of execution order pending appeal, stated:
- The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal, if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.
6. In the interest of justice, I will allow the application on condition that the applicant/appellant deposits the decretal amount in an interest-earning account in the joint names of the advocates on record within 30 days of this ruling. Failure to comply may result in the respondent proceeding with execution.

DELIVERED AND SIGNED AT NYANDARUA THIS 22ND DAY OF MAY 2025.



KIARIE WAWERU KIARIE
JUDGE

