Kanyari v Ndegwa & another (Civil Appeal E264 of 2024)
[2025] KEHC 7182 (KLR) (21 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7182 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CIVIL APPEAL E264 OF 2024

E OMINDE, J

MAY 21, 2025

BETWEEN

PAUL MAINA KANYARI ..... APPELLANT

AND

SUSAN WANGUI NDEGWA ..... 1ST RESPONDENT

MANJOK INTERNATIONAL LIMITED ..... 2ND RESPONDENT

RULING

1. By a Notice of Motion dated 10/12/2023, the Applicant seeks the following orders:
    1. Spent.
    2. Spent.
    3. That there be stay of execution of the judgment and decree of Kshs. 1,156,000/= plus interest pending the hearing and determination of Eldoret HCCA No. E264 of 2024; Susan Wangui Ndegwa & Manjok International Limited Vs. Paul Maina Kanyari.
    4. That this Honourable Court allow the Appellant/Applicant to furnish the Court in the form of Bank Guarantee from Family Bank.
    5. That the costs of the application be provided for.
2. The Application is premised on the grounds therein and is further supported by the Affidavit sworn by the Appellant/Applicant on the same date.
3. The Applicant deposed that he is the owner of the suit motor vehicle, which vehicle forms the subject matter of the instant suit, that judgment in this suit was delivered on 22/11/2024, by Hon. Mukabi Kimani in the for a total sum of Ks. 1, 156,000/- plus costs and interest.

4. Being dissatisfied with the aforementioned judgment, the Applicant instructed his Advocates on record to lodge an appeal against the said judgment on the issue of quantum and liability.

5. The Applicant further deposed that the orders of stay in force lapsed on 12/12/2024 and the Respondent is likely to execute the judgment/ or decree to his detriment whereas an Appeal has been lodged against the judgment delivered on 22/11/2024. The Applicant contended that the Respondent's financial ability is unknown and the judgment amount being a substantial amount, the Respondent is unlikely to refund the decretal sum if paid to her and in the event the appeal succeeds, he stands to suffer substantial loss while the appeal faces the risk of being rendered nugatory.

6. The Applicant maintained that it is the interest of justice that the orders of stay sought herein be granted so as to safeguard the interests of both parties as the Respondent's interests will be safeguarded by securing the decretal sum by way of a bank guarantee as not to render the Appeal nugatory. The Applicant stated that his insurer is ready and willing to furnish the Honourable court with a Bank Guarantee from Family Bank as security for due performance of the decree, within a stipulated period as directed by the Court.

7. The Applicant further deposed that the Application has been made in good faith and is not aimed at denying the Respondent an opportunity to enjoy the fruits of her judgment as proposed through his insurers to issue a Bank Guarantee as security in due performance of the decree in order to secure the decretal sum, that this Application has been made promptly, without undue delay and in the interests of justice and that the Respondent will not suffer any prejudice if the same is allowed.

The Replying Affidavit.

8. The Application is opposed by the 1st Respondent vide her Replying Affidavit sworn on 21/01/2025. She deposed that the instant application is legally incompetent and an abuse of the court process as the same is non-compliant with the basic requirements for the granting of stay orders. That Appellant/ Applicants Application has not been brought in good faith but rather is based on half-truths and immaterial facts, is full of malice, and is without any basis whatsoever and that the Application is clearly a ploy to delay her from enjoying the fruits of the judgement in

9. The Respondent deposes that the Appellant/Applicant has not satisfied the conditions for grant of Stay as established under Order 42Rule 6(2) of the Civil Procedure Rules 2010, in that the appellant was already issued with interim orders of stay on 13th December 2024 by the court with conditions which conditions they did not meet and so those stay orders should not be extended but should be vacated. and That the Appellant/Applicant has not placed before this court any material evidence to demonstrate the nature of loss he risks to suffer in the event the orders sought herein are not granted.

10. The Respondent maintained that it is not sufficient for the Appellant/Applicant to state in the application that it would suffer irreparable loss without disclosing the nature of the loss he will suffer.

11. The Respondent further deposed that an appeal cannot rendered nugatory on monetary decree if payment is made and it is not just to deny a successful party the benefit of judgement merely because his liquidity is unknown and that the contents of paragraph 3 of the supporting affidavit is untrue and unsubstantiated as the Appellant has not placed any material evidence before this Honourable court to demonstrate she would not be able to refund the decretal sums if the appeal were to succeed.

12. The Respondent contended that Manjok International Limited is not a 2nd Respondent but a Co-Appellant as in the primary suit, it was a defendant with the Appellant.

13. The Respondent maintained that financial ability of a decree holder solely is not a reason for allowing stay as demonstrated in the case of StephenWanjohi= vs= Central Glass Industries Limited Nairobi HCC No.6726 of 1991.

14. According to the Respondent, the Appellant/Applicant has failed to demonstrate that there exists an arguable Appeal with high chances of success nor has it satisfied the pre-requisite conditions set out in Order 42 Rule 6 of the Civil Procedure Rules, 2010 to Warrant grant of stay of Execution of decree pending, the hearing and determination of appeal, that the right of Appeal has to be balanced with the right of the decree holder to enjoy the fruits of Judgement and that if the Honourable court is Inclined to grant stay then it should direct that half of the decretal sum plus full costs be paid to the Respondent and the other half of the decretal sum be deposited in an interest earning Account in the Joint names of the Advocates for parties within 30 days from the date of the Order.

The Submissions

15. The Application was canvassed vide written submissions. The Applicant filed his submissions dated 31st January 2025 whereas the Respondent filed submissions 21st February 2025

The Applicant's Submissions.

16. Counsel for the Applicant submitted that in order to determine whether the instant application is merited, the Applicant has to satisfy the conditions set out under Order 42 Rule 6 of the Civil Procedure Rules, 2010 as follows; that substantial loss may result to the Applicant if the order of stay is not granted, that the Application seeking orders of stay has to be made without unreasonable delay and that the Applicant should be ready and willing to offer security as the Court offers for due performance of the decree.

17. Counsel added that to grant or refuse an application for stay of execution is a discretionary power, however, the discretion ought to be exercised in a manner that does not prevent an Appeal. (See position in Butt v Rent Restriction Tribunal [1979] eKLR which was cited with approval in Victor Ogola vs Mary Waithe Kihiu [2021] eKLR).

18. With regard to unreasonable delay, Counsel submitted that the Judgment (in the instant suit) which is subject to an Appeal was delivered on 22/11/2024. The Memorandum of Appeal was lodged within the required timelines (within 30 days from the date of judgment). Counsel urged that Application seeking orders for stay of execution was filed on 13/12/2024 which is timely. Counsel relied on the decision of Odero J. in Bihija Ali Sempa & Another v Bakari Mohamed Motte [2014] eKLR where the Judge therein deemed an application for stay of execution filed 35 days after the delivery of the judgment as having been filed timeously.

19. Regarding substantial loss, Counsel relied on the decision of James Wangalwa & Another vs Agnes Naliaka Cheseto [2012] eKLR observed as follows;

> " No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The Applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal.... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what

has to be prevented by preserving the status quo because such loss would render the appeal nugatory."(Emphasis Ours)

20. Counsel urged that if orders of stay of execution are not granted, the Respondent will proceed to execute the decree in his favour and the Applicant shall be forced to settle the decretal sum despite there being an appeal, that the Applicant in paragraphs 5 of the Supporting Affidavit has averred that the Plaintiff's/Respondent's financial standing is unknown and the judgment being of a substantial amount, the Plaintiff/Respondent is unlikely to refund the decretal sum if paid to him and further, the Defendant/Applicant has averred in order to protect the substratum of the appeal, it would be in the interests of justice that an order of stay of execution.

21. Counsel contended that Appellant/Applicant having expressed concerns that the Plaintiff/Respondent will be unable to refund the decretal sum should the appeal succeed, the Plaintiff/Respondent is/was under the obligation to prove that should the decretal sum be paid to him, then he would be in a position to refund the decretal sum should the appeal succeed. Counsel relied on the decision in National Industrial Credit Bank Limited vs Aquinas Francis Wasike & Anor (UR) C.A. 238/2005 which was cited with approval in Victor Ogola vs Mary Waithe Kihiu [2021] eKLR the Court of Appeal judges observed;

> " This Court has said before and it would bear repeating that while the legal duty is on an Applicant to prove the allegation that an appeal would be rendered nugatory because the Respondent would be unable to pay back the decretal summit is unreasonable to expect such an Applicant to know in detail the resources owned by the Respondent or lack of them. Once an Applicant expresses that a Respondent would be unable to pay back the decretal sum, the evidential burden must then shift to the Respondent to show what resources he has since that is a matter which is peculiarly within his knowledge."(Emphasis Ours).

22. Counsel observed that what has the Respondent placed before court to prove that that he is a person of means and would be in a position to refund the decretal sum if the same is paid out to him should the appeal succeed? Counsel submitted that Respondent has placed absolutely nothing! In his grounds of opposition, the Respondent has not averred if he is a person of means and would be in a position to refund the decretal sum should the appeal succeed and the averments of the Appellant/Applicant that the Respondent will not be in a position to refund the decretal sum thus remain uncontroverted.

23. Counsel contended that the Respondent has not annexed statements of accounts nor has he annexed any ownership documents in respect to any properties to prove he is a man of means; the Respondent has additionally not revealed if at all he has a source of income and the evidential burden squarely lies with the Respondent to prove that he will be in a position to refund the decretal sum which burden he has failed to discharge.

24. Counsel maintained that it is for the foregoing reasons that the Appellant/Applicant has averred that should the decretal sum be paid to the Respondent, he will not be in a position to refund the same should the appeal succeed. Counsel relied on the holding in Jairus Momanyi Buranda & another v Ojwang Emmanuel Ochieng [2021] eKLR where Wendoh J. while affirming that the Applicant therein shall suffer substantial loss for the reason that the Respondent failed to discharge the evidential burden that he would be in a position to refund the decretal sum.

25. Regarding Security for due performance of the decree, Counsel submitted that the Appellant/Applicant has proposed to furnish this Court with a Bank Guarantee from Diamond Trust Bank, Family Bank, Equity Bank or any other bank of good repute, that by offering to furnish security, it shows good faith on the part of the Appellant/Applicant as the Application for stay is not only

meant to deny the Respondent the fruits of the judgment, as the form of security will ensure that the interests of both the Appellant/Applicant and the Respondent will be secured pending the hearing and determination of the Appeal. Counsel relied on the holding in case of Focin Motorcycle C. Ltd vs Ann Wambui Wangui [2018] eKLR, with regard to the issue of security.

26. Counsel urged the Court to adopt the Applicant's proposal of furnishing a bank guarantee in due performance of the decree. Counsel added that depending on the outcome of the Appeal, either of the parties will be at liberty to proceed to liquidate the bank guarantee. Counsel relied on the holding in the case of Victor Ogola Vs. Mary Waithe Kihiu [2021] eKLR, with regard to the issue of a Bank Guarantee as an appropriate form of security.

27. In conclusion, Counsel submitted that the Applicant has made a case warranting granting orders of stay of execution and that his Application should be allowed as prayed.

The Respondent's Submissions.

28. Counsel for the Respondent cited Order 42 Rule 6 of the Civil of the Civil Procedure Rules in regard to the conditions to be satisfied in order to be granted an order of stay. Counsel urged that the Applicant's Application should not be allowed for reason that he has not met the said conditions.

29. Regarding Substantial loss, Counsel cited the case of Shell Ltd vs Kibiru & Another (1986) KLR 410 Platt JA and submitted that the Applicant is silent in his affidavit on how he stands to suffer substantial loss that itis only in his supporting affidavit Paragraph *5* that he contends that he stands to suffer substantial loss and the appeal faces the risks of being rendered nugatory. Counsel relied on the case of Kinyunjuri Muguta v watoku (2018) eKLR where it was held;

> " that it was not enough to merely state that loss will be suffered but that the Applicant must show the substantial loss that it will suffer in the event that the Orders sought are not given".

30. Counsel further submitted that it is trite law that execution is a lawful process and it is not a ground for granting stay of execution. The Applicant is required to show the manner in which execution will irreparably affect him or will alter the status quo to his detriment therefore rendering the appeal nugatory and the Appellant/Applicant has failed to demonstrate substantial loss. Counsel cited the case of James Wangalwa & Another vs Agnes Naliaka Cheseto [2012] eKLR.

31. Counsel maintained that the Appellant/Applicant has failed to demonstrate that he will suffer any substantial loss if the stay sought is not granted hence the instant application before court fails to meet the requirement for granting stay pending appeal.

32. With regard to undue delay, Counsel submitted that it is a pre-condition that an application of stay of execution pending appeal ought to be allowed where the Applicant has made the application without unreasonable delay, the lower court's judgment was delivered on 22/11/2024, the Appellant did not seek stay of execution nor file an application for stay until 13/12/2024. Counsel urged that the Appellant did not approach equity swiftly and was indolent hence the instant application ought to be dismissed with costs.

33. Regarding security, Counsel submitted that the Appellant/Applicant have not furnished any security in the terms of the full decretal sum for the due performance of the decree in this case and that when the instant application come for hearing on 13/12/2024 the court directed that the bank guarantee from Family Bank was to be deposited in court within Fourteen (14) days from 13/12/2024. Counsel contended that it is evident that the above order of 13/12/2024 has not been complied with by the Appellant/Applicant as no evidence has been tendered in court to confirm the same. It is now over two

(2) months since the order to deposit the Bank guarantee in court was issued and has not been complied by the Appellant/Applicant. Counsel submitted that in open blatant defiance of a court order of depositing the Bank guarantee in court as directed by the court, the Appellant/Applicant cannot be granted stay pending appeal as sought. Counsel relied on the authority and holding in Ojwang. J (as then he was) in the case of B.V. Attorney General (2004) 1KLR 431 observed that:

> " The Court does not, and ought not to be seen to, make Orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the Constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people."

34. Counsel added that in the replying affidavit of SUSAN WANGUI NDEGWA in paragraph *16* she avers if this Honourable court is inclined to grant stay then it should direct that half of the decretal sum plus full costs be paid to the Respondent and the other half of the decretal sum be deposited in a joint interest earning account in the joint names of the advocates for parties within 30 days from the date of the order.

35. Counsel submitted that the Appellant was given an opportunity to meet this limb of depositing security however he has squandered that opportunity by failure to do so, hence does not deserve this Honourable court order of stay. That this matter arose from a Road Traffic Accident on 7th June 2018 where the Respondent was lawfully travelling as a fare paying passenger with her children aboard Motor Vehicle Registration Number KCP 490B TOYOTA which was being driven by the Appellant, as a result of the said accident the Respondent sustained severe bodily injuries and sought damages.

36. Counsel urged that considering the year the suit was instituted and up now, the Respondent has been unable to go on with her daily activities due to the medical bills and the fact that she was a casual labourer before the accident, she has not been able to do casual work since the accident happened, therefore, in the interest of justice she needs to be allowed to enjoy the fruits of her judgment in the lower court.

37. Counsel urged the court to be guided by the decision in *Edward Kamau & Another v Hannah Mukui Gichuki Misc. No.78 of 2015* and employ a balancing act between the rights of the parties by granting stay of execution on condition that the Applicant pays half the decretal sum and costs to the Respondent and deposit the balance in a fixed joint interest earning account of both advocates. Counsel also cited the Court in Machakos in Civil Appeal No. 219 of 2023 in the case of Elizabeth Kango and Eunice Mukui Nthuli, where it was held as follows;

> " Taking all relevant factors into account and in order not to render the intended appeal illusory while at the same time securing the interests of the successful party to the appeal, I do grant prayer (4) of the Notice of Motion application dated 8th September, 2023 pending hearing and determination of the appeal filed on condition that the appellants will pay the Respondent half ofthe decretal sum awarded and deposit the other half in a joint interest earning account held in the joint names of both counsels herein at a reputable commercial bank."

38. Counsel further submitted that in the Appellant/Applicant's application dated 10.12.2024 paragraph *5*, he avers that the Respondent's financial ability is unknown and the judgement amount being a substantial amount, the Respondent is unlikely to refund the decretal sum if paid to her in the event

the appeal succeeds. Counsel relied on the case of Peter =V= Obare (Civil Appel 096 of 2023) KEHC 1068 (KLR), where the court held as follows;

> " In this case before me, the allegation that the Respondent's financial status is still unknown and has not been proved, and that there is likelihood that the Respondent has no means to refund the decretal amount does not rob and/or deny the said Respondent from the enjoyment of the fruits of his judgment"

39. Counsel contended that the mere fact that the decree holder is not a lady of means does not necessarily justify her being barred from benefiting from the fruits of her judgment. Counsel urged that the general rule is that the court ought not to deny a successful litigant of the fruits of his judgment save in exceptional circumstances where to decline to do so may well amount to stealing the right of the unsuccessful party to challenge the decision in the higher court. Counsel cited the case of Machira T/ A Machira & Co. Advocates vs. East African Standard (No.2) [2002] KLR 63.

40. Counsel further contended that the appellant cannot evade liability since she was a mere passenger in the ill- fated motor and she did not contribute to the occurrence of the accident the evidence that was not rebutted by the Appellant, the Respondent submit that this instant application is only calculated to delay and prevent the Respondent from enjoying the fruits of her judgment, and also deny her justice.

41. Regarding Costs, Counsel cited Section 27 of the *Civil Procedure Act*, Cap 21 Laws of Kenya. Counsel also relied on the decision in the case of Peter Gichui Njuguna-vs-Jubilee Insurance Co. Ltd [2016] eKLR the court, while addressing the issue of costs stated as follows.

> " An award of costs is a matter of discretion of the court that ought to be exercised upon grounds on which a reasonable man could have come to the conclusion arrived at; the general rule that the costs should be awarded to the successful party, a rule which should not be departed from without the exercise of goods for doing so".

42. Based on the foregoing, Counsel submitted that the Appellant/Applicant should bear the costs of Application, he is liable for the accident, it is because of his negligence that this application before the court. Counsel urged that the Appellant/Applicant should therefore be compelled to cater for the costs of the instant application.

43. In the end, Counsel submitted that it is imperative that the right of appeal must be balanced against an equally weighty rigid right of the plaintiff to enjoy the fruits of the judgment delivered in his favour. In the case of Samvir Trustee Limited vs Guardian Bank Limited [2007] eKLR the court stated:-

> " The Court in considering whether to grant or refuse an application for stay is empowered to see whether there exist any special circumstances which can sway the discretion of the court in a particular manner. But the yardstick is for the court to balance or weigh the scales ofjustice by ensuring that an appeal is not rendered nugatory while at the same time ensuring that a successful party is not impeded from the enjoyment of the fruits of his judgment. It is a fundamental factor to bear in mind that a successful party is prima facie entitled to fruits of his judgment; hence the consequence of a judgment is that it has defined the rights of a party with definitive conclusion."

44. Counsel added that in granting stay, the Court has to carry out a balancing act between the rights of the parties.

Determination.

46. The principles guiding the grant of a stay of execution pending appeal are well settled. These principles are provided under Order 42 Rule 6(2) of the Civil Procedure Rules which provides as follows:

No order for stay of execution shall be made under subrule (1) unless—

(a) the Court is satisfied that substantial loss may result to the Applicant unless the order is made and that the Application has been made without unreasonable delay; and

(b) such security as the Court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicant

47. Order 42 Rule 6(1) of the Civil Procedure Rules provides as follows:

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 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.

48. The factors to consider in stay pending appeal is set out in the Court of Appeal decision in Butt v Rent Restriction Tribunal [1982] KLR 417. The Court gave guidance on how a Court should exercise discretion in such an Application and held as follows: -

1. The power of the Court to grant or refuse an Application for a stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal.

2. The general principle in granting or refusing a stay is; if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal Court reverse the judge's discretion.

3. A judge should not refuse a stay if there are good grounds for granting it merely because in his opinion, a better remedy may become available to the Applicant at the end of the proceedings.

4. The Court in exercising its discretion whether to grant [or] refuse an Application for stay will consider the special circumstances of the case and unique requirements. The special circumstances in this case were that there was a large amount of rent in dispute and the Appellant had an undoubted right of appeal.

5. The Court in exercising its powers under Order XLI rule 4(2)(b) of the Civil Procedure Rules, can order security upon Application by either party or on its own motion. Failure to put security for costs as ordered will cause the order for stay of execution to lapse.

49. As to whether the Applicant shall suffer substantial loss, in the case of Kenya Shell Limited –vs- Benjamin Karuga Kigibu & Ruth Wairimu Karuga (1982-1988) KAR 1018 (Supra) the Court of Appeal pronounced itself to the effect that:

> "It is usually a good rule to see if Order 41 Rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the Applicant, it would

be rendered nugatory by some other event. Substantial loss in its various forms is the cornerstone of both jurisdictions for granting stay."

50. On the issue of substantial loss, Ogola, J in Tropical Commodities Suppliers Ltd & Others vs. International Credit Bank Ltd (in liquidation) [2004] 2 EA 331 stated that:

> " Substantial loss does not represent any particular mathematical formula. Rather, it is a qualitative concept. It refers to any loss, great or small, that is of real worth or value as distinguished from a loss without value or a loss that is merely nominal.'

51. Also, it was observed in James Wangalwa & Another v Agnes Naliaka Cheseto [2012] eKLR, (Supra) that:

> " No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The Applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory."

52. In the case of National Industrial Credit Bank Ltd Vs Aquinas Francis Wasike & Another [2006] eKLR the Court of Appeal held thus;

> " Once an Applicant expresses a reasonable fact that a Respondent would be unable to pay back the decretal sum, the evidential burden must then shift to the Respondent to show whatever resources he has since that is a matter which is peculiarly within his knowledge."

53. On the whether the appeal is arguable, the Court herein is guided by the decision in the case of Athuman Nusura Juma Vs. Afwa Mohamed Ramadhan [2016] eKLR wherein the Court held as follows:

> " whether the intended appeal has merits or not is not an issue to be determined by a Court when dealing with an Application of this nature but by the Court dealing with the merits of the appeal, that is why the requirement that the intended appeal be arguable is preferred with the word "possibly"

54. Having carefully considered the application, the pleadings and the submissions and having also addressed my mind to the statutory provisions as well as the case law herein cited, I am satisfied that the application has merit. I also take cognisance of the fact as pointed out by the Respondent s that the applicant was granted interim orders and directed that he furnishes the Court with a Bank Guarantee from Family Bank within 14 days from the date of that order. The Applicant did not comply. In this regard, I allow the Application as follows;

a. That a stay of execution of the judgment and decree of Kshs. 1,156,000/= plus interest in Eldoret CMCC No. 590 of 2019 be and is now hereby issued pending the hearing and determination of Eldoret HCCA No. E264 of 2024; Susan Wangui Ndegwa & Manjok International Limited Vs. Paul Maina Kanyari.

b. That the Applicant is to pay half the decretal amount being Ks. 578, 000/- to the Respondent and deposit the other half of the decretal sum in an interest earning account in the joint names of the Advocates on record in within 45 days from today's date failure to which the orders herein granted in their favour shall be deemed to have lapsed and the Respondent shall then be at liberty to execute for the entire decretal sum.

c. The Record of Appeal is to be filed within 60 days from today's date. Mention on 16th September for Pre-Trial Conference.

d. The Applicant is to bear the costs of the Application.

READ DATED AND SIGNED AT ELDORET ON 21ST MAY 2025

E. OMINDE

JUDGE