



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
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**First Assurance Company Limited v Mutahi (Civil Appeal
E405 of 2022) [2025] KEHC 8789 (KLR) (Civ) (23 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8789 (KLR)

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

CIVIL

CIVIL APPEAL E405 OF 2022

LP KASSAN, J

JUNE 23, 2025

BETWEEN

FIRST ASSURANCE COMPANY LIMITED APPELLANT

AND

ANTHONY MAINA MUTAHI RESPONDENT

RULING

1. The Appellant/Applicant moved the court by way of Notice of Motion dated 30.09.2024. It was brought under sections 1A, 1B, & 3A of the *Civil Procedure Act*, Order 22 Rule 22, Order 42 Rule 6 and 7, Order 45 Rule 1 and Order 51 Rule 1 of the *Civil Procedure Rules*. The Applicant is seeking the following orders:
 - a. Spent
 - b. Spent
 - c. Spent
 - d. That there be stay of execution in Milimani CMCC No. E1254 of 2021 pending the hearing and determination of the Appeal in the Court of Appeal.
 - e. That the amount of Kshs 2,000,000/= deposited in court as security be held in court pending the hearing and determination of the Appeal before the Court of Appeal.
 - f. That the Honourable Court be pleased to review, set aside and/or discharge the orders issued on 27.06.2024.
 - g. That the Honourable Court may grant any other or further orders the court may deem fit and just to grant.



- h. That costs be in the cause.
2. The application was premised on the following grounds:
 - a. That the appeal was heard, determined, and judgment delivered on 27.06.2024.
 - b. That being dissatisfied, a notice of appeal to the Court of Appeal had been filed with a request for proceedings.
 - c. That the security deposited in court was ordered to be released to the Respondent. However, as the Appellant/Applicant had filed a notice of appeal, the security should continue being held in the joint account awaiting the outcome of the appeal to the Court of Appeal.
3. The Respondent opposed the application on the following grounds:
 - a. That the application herein is frivolous and an abuse of the court process.
 - b. That the Applicant has not shown that he will be unable to repay the security.
 - c. That the Respondent is a prominent businessman with vast businesses in Nairobi and its environs.
4. The order to deposit the Kshs.2,000,000/= in the names of the Advocates on record was to ensure the appeal was heard and determined. That appeal was determined on 27.06.2024. The conditions for which the deposit was made have expired. This, therefore, made the Appellant apply for a stay of execution of the decree, awaiting the intended appeal on 30.09.2024.
5. Since the Appellant has filed a notice of appeal in the Court of Appeal dated 01.07.2024, it is prudent to give them the chance to pursue their intended appeal which is a constitutional right. It would therefore not be in order to release the deposit, which is in an interest-earning account. The only condition to add is that if the Appellant does not file the record of appeal to the Court of Appeal within 30 days from the date of the ruling, then the Respondent be at liberty to apply for the release of the deposit. Stay is granted pending hearing and determination of appeal.
6. Costs be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 23RD DAY OF JUNE 2025.

LINUS P. KASSAN

JUDGE

In the presence of:-

Mahuhu for the Appellant

No appearance for the Respondent

Carol – Court Assistant

