



**Jane & another v Warui (Civil Appeal E467 of 2021)  
[2025] KEHC 12185 (KLR) (Civ) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 12185 (KLR)

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

**CIVIL**

**CIVIL APPEAL E467 OF 2021**

**TW CHERERE, J**

**JUNE 5, 2025**

**BETWEEN**

**BENSON MWANGI JANE ..... 1<sup>ST</sup> APPELLANT**

**KENNEDY NJOROGE KABURI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**NANCY NYAMBURA WARUI ..... RESPONDENT**

**RULING**

1. By a Notice of Motion dated 16<sup>th</sup> May 2025 brought under Sections 1A, 1B, 3 and 3A of the [Civil Procedure Act](#), the Respondent seeks the following orders:
  1. That the sum of KES. 207,185 deposited in court by the Appellant be release as follows:
    - i. KES. 7,185 to the firm of Oloo & Oloo Advocates LLP through account number 1281xxxxxx at Kenya Commercial Bank, Haile Selassie Avenue Branch
    - ii. KES. 200,000 to the firm of Kimondo Gachoka & Company Advocates
  2. Appellant be compelled to provide original receipt of the deposit
  3. Costs be in the cause
2. The application is supported by an affidavit sworn on 16<sup>th</sup> May 2025 by Gladys Kihara counsel for the Respondent who avers that as a condition of stay, the Appellant deposited KES. 207,185 with the court. She further deposes that following the conclusion of the appeal, a sum of KES. 7,185 is due to the firm of Oloo & Oloo Advocates LLP, while the balance of KES. 200,000 is payable to the firm of Kimondo Gachoka & Company Advocates.



3. At the hearing counsel for the Appellant informed the court that the application was not opposed.
4. The Court has carefully considered the application and the record. Notably, there is no evidence on the Court's Case Tracking System (CTS) to confirm that the alleged deposit of KES 207,185 was ever made and no official receipt or court acknowledgement has been availed in support thereof.
5. What is particularly unusual and wholly unexplained is that the application has been brought by the Respondent's advocate, who is only entitled to a sum of KES 7,185, whereas the sum of KES 200,000, forming the larger portion of the alleged deposit, was deposited by and is due to the Appellant's advocate.
6. In the absence of proof of deposit, the Court declines, to accede to the request for release of funds purportedly held on deposit.
7. In the circumstances, the Notice of Motion dated 16<sup>th</sup> May 2025 is hereby dismissed. Costs shall be in the cause.

**DELIVERED AT NAIROBI THIS 05<sup>TH</sup> DAY OF JUNE 2025**

**WAMAE.T. W. CHERERE**

**JUDGE**

Appearances

Court Assistant - Ubah

For Appellants - Ms. Wanjira for Kimondo Gachoka & Company Advocates

For Respondent - Mr. Amimo for Oloo & Oloo Company Advocates

