



**Kenya Breweries Limited v Kuria & 2 others (Civil Appeal  
21 of 2015) [2025] KEHC 12172 (KLR) (Civ) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 12172 (KLR)

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

**CIVIL**

**CIVIL APPEAL 21 OF 2015**

**TW CHERERE, J**

**JUNE 5, 2025**

**BETWEEN**

**KENYA BREWERIES LIMITED ..... APPELLANT**

**AND**

**GEORGE GITHINJI KURIA ..... 1<sup>ST</sup> RESPONDENT**

**FEISAL ATHAMAN NDARAWA ..... 2<sup>ND</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. By a Notice of Motion dated 05<sup>th</sup> May 2025 brought under Order 51 of the Civil Procedure Rules and Sections 1A, 1B, 3A, 63(e) and 98 of the [Civil Procedure Act](#), the Appellant seeks the following orders:
  1. That within seven (7) days or such other period as the Court may direct, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' advocates, Messrs Kithi & Company Advocates, do execute the necessary documentation authorising Development Bank of Kenya Limited to uplift the fixed deposit and remit the principal sum and accrued interest held in joint account number 001PRIV201420011 to Muthoga Gaturu & Company Advocates Client Account at NCBA Bank PLC, Mama Ngina Branch, Account No. 6432230014.
  2. In default, the Deputy Registrar of the Civil Division of this Court do execute the said documentation on behalf of the firm of Messrs Kithi & Company Advocates.
  3. That the costs of this application be provided for.
2. The application is supported by an affidavit sworn on 05<sup>th</sup> May 2025 by Mr. James O. Okeyo, counsel for the Appellant. He avers that:



1. Judgment in the lower court was delivered against the Appellant for a sum of Kshs 1,031,837/ = comprising general damages, costs, and interest.
  2. The Appellant lodged the present appeal and simultaneously deposited the decretal sum in a joint interest-earning account in the names of the advocates for the parties as a condition for stay of execution pending appeal
  3. On 11<sup>th</sup> October 2019, this Court delivered judgment allowing the appeal and dismissing the suit in the lower court.
  4. The effect of the judgment was to nullify the decree of the lower court, extinguishing the basis for execution and consequently, the justification for retention of the deposited sum
  5. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents' advocates have refused, failed, or neglected to execute the necessary documentation to authorise release of the funds, thereby necessitating the present application.
3. The application was duly served on the Respondents' advocates. However, no response or grounds of opposition were filed.

### **Analysis and Determination**

4. The issues for determination is whether the Appellant is entitled to release of the deposited funds following the success of the appeal.
5. It is not in dispute that the sum of KES. 1,031,837 was deposited into a joint account by consent of the parties as security for stay pending appeal. It is also undisputed that this Court allowed the appeal and dismissed the lower court's suit, effectively reversing the judgment on which the decree was founded.
6. The principle of restitution following a successful appeal is well settled. Upon reversal of a judgment, the successful party is entitled to be restored to the position they were in prior to the impugned decision. This includes refund or release of monies deposited as security pending appeal. Any unjustified retention of the same offends Article 40(1) of *the Constitution*, which guarantees the right to property, and amounts to arbitrary deprivation.
7. Where a judgment is reversed on appeal, the successful appellant is entitled to the fruits of the judgment, including refund of any monies paid or deposited pursuant to the impugned decree.
8. The refusal or inaction by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' counsel to cooperate in effecting release of the funds is not only unprofessional but amounts to obstructing the administration of justice. In such instances, Section 98 of the *Civil Procedure Act* empowers the Court to authorise the Deputy Registrar to execute necessary documents in place of a party or advocate who unreasonably refuses to do so.
9. Further, Section 63(e) of the *Civil Procedure Act* allows the Court to make such interlocutory orders as may be necessary to prevent abuse of process or to meet the ends of justice.

### **Disposition**

10. Given the foregoing, I find that the Appellant has made out a proper case for grant of the orders sought. Accordingly, I allow the application dated 05<sup>th</sup> May 2025 and order as follows:
  1. Within seven (7) days from the date hereof, the firm of Messrs Kithi & Company Advocates shall execute the instruction letter and/or other necessary document(s) authorising Development Bank of Kenya Limited to uplift the Fixed Deposit and remit the principal sum



and accrued interest held in joint account number 001PRIV201420011 to Muthoga Gaturu & Company Advocates Client A/C, NCBA Bank PLC - Mama Ngina Branch, Account No: 6432230014.

2. In default of compliance with Order (1), the Deputy Registrar of the Civil Appellate Division of this Court shall execute the said documents in place of Messrs Kithi & Company Advocates within a further seven (7) days.
3. I make no order for costs.

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

**WAMAE.T. W. CHERERE**

**JUDGE**

Appearances

Court Assistant - Ubah

For Appellant - Mr. Okeyo for Muthoga Gaturu & Company Advocates

For 1<sup>st</sup> and 2<sup>nd</sup> Respondents - Ms. Katana for Kithi & Company Advocates

For 3<sup>rd</sup> Respondent – N/A

