



REPUBLIC OF KENYA



KENYA LAW
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**Mahagayu & another v Musaba (Civil Miscellaneous Application
E003 of 2025) [2025] KEHC 7967 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 7967 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CIVIL MISCELLANEOUS APPLICATION E003 OF 2025**

JN KAMAU, J

JUNE 5, 2025

BETWEEN

ELLAM KIVISI MAHAGAYU 1ST APPLICANT

JOSEPH MUCHIRI CHEGE 2ND APPLICANT

AND

JOHNSON NYONGESA MUSABA RESPONDENT

RULING

1. In their Notice of Motion dated 30th January 2025 and filed on 10th February 2025, the Applicants had sought orders of stay of execution of the Judgment and/or Decree delivered on 26th September 2024 for Kshs 130,550/= plus interests in Vihiga CMCC No 6 of 2020 pending hearing and determination of the intended appeal and further, that this court be pleased to grant them leave to file an appeal against the said Judgment and Decree out of time.
2. The Respondent was technically not opposed the Applicants' application when it came up for inter partes hearing on 7th April 2025 as he pointed out that he would not be filing any response to the said application. The bone of contention was where to deposit the decretal sum. It proposed that the Applicants deposit the entire decretal sum in court as a condition for the order of stay of execution as he found it complicated to open a joint interest earning account. The Applicants' counsel sought for two (2) weeks to get the approval from his clients. The matter was then fixed for mention on 4th June 2025 for purposes of recording a consent on the deposit of the decretal sum.
3. When the matter came up in court on 4th June 2025, the parties indicated that they had not arrived at any consent regarding the deposit of the decretal sum. The Applicants wanted the monies deposited in a joint interest earning account due to what it perceived as difficulties of withdrawing the said monies from the court in the event they were successful on Appeal. On the other hand, the Respondent was emphatic that the monies should be deposited in court. He averred that he would face difficulties in



the release of the monies if they were deposited in a joint interest earning accounts and the Appeal herein was dismissed.

4. Notably, it is common practice that where the security is money, it is preferred to deposit decretal sums in interest-earning accounts, in the joint names of advocates representing the parties to the proceedings in question. Depositing monies in a joint interest-earning account benefits both parties because by the time the appeal is determined, the money would have accrued interest earned on the deposited amount. On the other hand, decretal sums deposited in court do not earn any interest.
5. Having analysed the arguments by the parties herein, this court noted that both processes of depositing decretal sums had their own unique challenges starting from opening the joint accounts, depositing and release of the monies. However, neither of the two (2) processes was prejudicial to the parties.
6. Be that as it may, this court noted that as it was the Applicants who were depositing the monies, it was this court's discretion that the decretal sum herein be deposited in a joint interest-earning account of both advocates as the Applicants would benefit from the interest of being kept away from their monies in the event they succeeded in their Appeal. In the event the Applicants lost on appeal, the Respondent would also benefit from the interest that would have accrued from the deposited amounts. There was also the advantage of both account holders monitoring the account's balance and transactions therein in the case of a joint interest earning account.

Disposition.

7. For the foregoing reasons, the upshot of this court's decision was that the Applicants' Notice of Motion application dated 30th January 2025 and filed on 10th February 2025 be and is hereby allowed in the following terms:-
 1. That a stay of execution of the Judgment and/or Decree in Vihiga CMCC No 6 of 2020 be and is hereby granted pending the hearing and determination of the intended appeal on condition the Applicants shall deposit the sum of Kshs 130,550/= into an interest earning account in the joint names of their advocates and the advocates for the Respondent herein within sixty (60) days from the date of this Ruling.
 2. That for the avoidance of doubt, in the event, the Applicants shall default on Paragraph 7(1) hereinabove, the conditional stay of execution shall automatically lapse
 3. That the Applicants be and are hereby directed to file and serve their Memorandum of Appeal within fourteen (14) days from the date of this Ruling.
 4. That the Applicants be and is hereby directed to file and serve their Record of Appeal within one hundred and twenty (120) days from the date of this Ruling.
 5. That this matter will be mentioned on 15th October 2025 to confirm compliance and/or for further orders and/or directions.
 6. Costs of the application herein shall be in the cause.
 7. Either party is at liberty to apply.
8. Orders accordingly.

DATED AND DELIVERED AT VIHIGA THIS 5TH DAY OF JUNE 2025

J. KAMAU

JUDGE

