



**Omariba v Njeri & another (Suing as Administrators of the Estate of Alex Chau Ndungu)
(Civil Appeal E182 of 2022) [2025] KEHC 12230 (KLR) (Civ) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 12230 (KLR)

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

CIVIL

CIVIL APPEAL E182 OF 2022

TW CHERERE, J

JUNE 5, 2025

BETWEEN

CLIFFORD OTUNDO OMARIBA APPELLANT

AND

JUDY MUTHONI NJERI 1ST RESPONDENT

DENNIS NDUNGU CHAU 2ND RESPONDENT

SUING AS ADMINISTRATORS OF THE ESTATE OF ALEX CHAU NDUNGU

RULING

1. By a Notice of Motion dated 12th July 2024 brought under Sections 1A, 1B, and 3A of the *Civil Procedure Act* and Order 51 Rule 1 of the *Civil Procedure Rules*, the Appellant seeks the following orders:
 1. That the Honourable Court be pleased to order that the money deposited in the joint account at Prime Bank Limited, Kenindia Branch, in the names of Modi & Co. Advocates and Maina Kagura & Co. Advocates be released forthwith to Modi & Co. Advocates, being the Appellant's advocates;
 2. That the costs of this application be provided for.
2. The application is supported by an affidavit sworn on 12th July 2024 by Kennedy Modi, counsel for the Appellant. It is deponed that pursuant to an earlier order of stay, the decretal sum was deposited in a joint interest-earning account in the names of the parties' advocates. Judgment in the appeal was delivered on 01st July 2024 in favour of the Appellant, and Appeal has been lodged to challenge that decision.



3. The Respondents were served but did not oppose the application.
4. There is no dispute that the funds in question were deposited to secure a decree that has since been overturned on appeal. There is no legal basis for the continued withholding of those funds, as there is no stay of the judgment or indication of an intended appeal.
5. Under Article 40(1) of the *Constitution* of Kenya, every person has the right to property, and continued detention of the Appellant's funds, absent lawful cause, would amount to a violation of that right. The Court must give effect to the Appellant's entitlement as a successful litigant.
6. In the result, the application dated 12th July 2024 is allowed on the following terms:
 1. The monies and interest thereof, held in the joint account at Prime Bank Limited – Kenindia Branch in the names of Modi & Co. Advocates and Maina Kagura & Co. Advocates shall be released forthwith to Modi & Co. Advocates, being counsel for the successful Appellant.
 2. The firm of Maina Kagura & Co. Advocates shall, within seven (7) days from the date of this ruling, sign all necessary documents to effect the withdrawal and release of the said funds.
 3. In the event of default or non-compliance by Maina Kagura & Co. Advocates within the stipulated seven (7) days, the Deputy Registrar of this Court is hereby authorized to sign the relevant documents on their behalf to facilitate release of the funds.
 4. I make no order for costs.

DELIVERED AT NAIROBI THIS 5TH DAY OF JUNE 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Ubah

For Appellant - Mr. Modi for Modi & Company Advocates

For Respondents - N/A for Maina Kagura & Co. Advocates

