



REPUBLIC OF KENYA



KENYA LAW
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Kiogora (Suing as the Administrator of the Estate of Eric Kithinji Guantai - Deceased) v Guantai & 2 others (Civil Appeal E001 of 2025) [2025] KEHC 11158 (KLR) (Civ) (24 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11158 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ISIOLO
CIVIL
CIVIL APPEAL E001 OF 2025
SC CHIRCHIR, J
JULY 24, 2025**

BETWEEN

CAROLINE KATHAMBI KIOGORA (SUING AS THE ADMINISTRATOR OF THE ESTATE OF ERIC KITHINJI GUANTAI - DECEASED) APPELLANT

AND

**PATRICK GITUMA GUANTAI 1ST RESPONDENT
ISSACK ADAN TULICHA 2ND RESPONDENT
DAVID GITONGA KIRERA 3RD RESPONDENT**

RULING

1. The Appellant's Notice of Motion dated 4th March, 2025 seeks following orders *inter-alia*:
 - a). That pending the hearing and determination of this appeal, this honourable court be pleased to stay proceedings in *Isiolo CMCC No. E034 of 2022*.
 - b). That pending the hearing and determination of this appeal, this honourable court be pleased to issue an order stopping the release of Kshs.500,000/= deposited in court as security for the performance of the decree in *Isiolo CMCC No.E034 of 2022*.
2. The Application is supported by the affidavit of Caroline Gathambi Kiogora sworn on 14th March 2025 and is premised on the following grounds:
 - a. That the trial court on the 12th May, September, 2023 entered judgement for the Appellant against the respondent for a total sum of Kshs. 6,824,218.
 - b. That the judgement was arrived at after hearing and considering the evidence presented by all the parties.



- c. That the trial court has now set aside the said judgement against the 3rd Respondent and ordered that the matter be re-heard in respect of liability.
 - d. That aggrieved by the said decision, the Appellant has challenged it through this appeal.
 - e. That the trial court had ordered the 3rd Respondent to deposit Kshs. 500,000/= in court as security for the performance of the decree which was duly complied.
 - f. That the 3rd Respondent has now sought a release of the said Kshs. 500,000 which will prejudice the Appellant as she will have no money to settle her decree in the event the appeal succeeds.
 - g. That is therefore in the interest of justice that the money remains in court as security until the appeal is heard and determined.
3. The Application is opposed by the 3rd Respondent (The Respondent) *vide* the replying affidavit dated 15th April,2025 .The Respondent states that the Application is without merit since it is only aimed at seeking to stop the release of the deposited funds.
 4. The Respondent avers that the Applicant has not come to court with clean hands and he has not demonstrated that the respondent is a man of straw, who cannot afford to raise any amount and in particular the judgment of the trial court of more than Kshs. 6,000,000/=
 5. The Respondent further avers that the Applicant has not demonstrated what damage she will suffer if the amount of Kshs.500,000/= is released to the 3rd Respondent.
 6. The Application proceeded by way of written submissions.

Appellant's Submissions

7. The Appellant submitted on two issues, namely;
 1. Whether the proceedings in the trial court should be stayed.
 2. Whether the Kshs. 500,000 deposited in court should be released to the 3rd Respondent.
8. On the first issue, the Appellants submits that the propriety of granting stay proceedings pending an appeal over interlocutory matters is decided on the facts of each case and with due regard to the statutory general rule that appeals are not entertained piecemeal; That the appeal raises the substantial question of whether a court can set aside a judgement where a party has not only entered appearance and filed a defence, but also participated in the hearing.
9. It was the Appellant submission that if the matter is reheard at the trial court before this appeal is determined, the appeal will become an academic exercise.
10. The Appellant further submits that this is a case of *sui generis*, where the appellant could not have waited for the matter to be reheard so that she could appeal against both the order setting aside the judgment and the resultant judgment after rehearing.
11. On the release of Kshs.500,000/= deposited in court, the Applicant submits that it is necessary for the money to remain in court so that the if the Judgement of the lower court is reinstated by this court, there is security for the performance of the decree. The Appellant thus urged this court to order that the funds remains in court.



Respondent's Submissions.

12. The respondent submitted on the following issues;
 - a. Whether or not the Applicant has established sufficient cause to the satisfaction of the court to grant an order for stay of proceedings in *Isiolo CMCC No. E034 of 2022*
 - b. Whether or not an Order to stop the release of the security deposited in court should be issued.
13. On the first issue it is submitted that the Applicant has not given reasons as to why this court should stop the proceedings of the lower court and that the release of the security of Kshs. 500,000/= deposited in Court cannot be reason for stay of proceedings.
14. It is further submitted that the Applicant has not sought for any injunction in the instant application and has not demonstrated any loss that will be suffered in the event that the orders sought are not granted. He points out that stay of proceedings should not be confused with stay of execution. He has placed reliance on the case of *Kenya Wildlife Service v James Mutembei* (2019) eKLR, in this regard.
15. On the second issue, it is submitted that no explanation has been given as to why the deposit should not be released; that the order to deposit the aforesaid Kshs.500,000/= became moot the moment the trial court application dated 18th September,2024 was determined; that the trial court ordered for the retrial of the lower court suit with the participation of all parties and hence the orders to deposit security was no longer practical.

Determination

16. The issues that arise for determination are whether the lower court proceedings should be stayed, and whether the release of the funds deposited in the lower court should be barred.

Whether the lower court proceedings should be should be stayed.

17. To grant or deny an order for stay of proceedings is an act of judicial discretion, and there are principles that guide the exercise of the said discretion. In *Global Tours & Travels Ltd; Nairobi HC Winding Up Cause No. 43 of 2000* as cited with approval in *Kenya Power & Lighting Company Limited v Esther Wanjiru Wokabi* [2014] KEHC 3174 (KLR) , Justice Ringera stated: As I understand the law, whether or not to grant a stay of proceedings or further proceedings...is a matter of judicial discretion to be exercised in the interests of justice...The sole question is whether it is in the interests of justice to order a stay of proceedings, and in answering it, the Court is to bear in mind such factors as the need for expeditious disposal of cases, the *prima facie* merits of the intended appeal and whether the appeal, if successful, would be rendered nugatory.”
18. In *Halsbury's Law of England*, 4th Edition. Vol. 37 page 330 and 332, the subject of stay of proceedings is discussed as follows:

“The stay of proceedings is a serious, grave and fundamental interruption in the light that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court’s general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.....“This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.....It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground



must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”

19. In *Kenya Wildlife Service v James Mutembei* [2019] KEHC 10478 (KLR) Justice Gikonyo held: Stay of proceeding should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore the test for stay of proceeding is high and stringent”
20. Turning to the present case , I have noted that the proposed Appeal is an interim Appeal. It is against the lower court’s decision to set aside the Judgment and ordering for the rehearing of the suit. At the core of the dispute would be issues like the constitutional right of a person to be heard. I have read the ruling which forms the subject matter of the Appeal, and without going to the merits, I have my reservations on the chance of it succeeding. Thus , as to whether the Appeal has a chance of succeeding, my answer is in the negative.
21. Further an order for stay of proceedings pending Appeal , having in mind the stringent test referred to by Justice Gikonyo(*supra*), would be appropriate for instance if the Appeal is challenging the jurisdiction of the trial court to entertain the suit or matters touching on witness testimonies or production of documents., or any other issue that would compromise the outcome of the case unless determined at the interim stage.
22. In view of the above am not satisfied that there are sufficient ground to stay the proceedings. If anything the stay will only serve to delay the suit, which has been in court since the year 2022. It is in the interest of all the parties and indeed their right that the suit be disposed within the earliest time possible.

Whether the release of the deposit should be stopped

23. The Applicant states the respondent has applied for the release of the deposit that was deposited by the respondent as a condition for stay pending the hearing of the Application. The Application seeking for release of funds is dated 28 /2/2025 and was filed on 14/3/2025. The Application is attached to the respondent’s replying Affidavit and marked as Annexure No. 6. The status of this Application is unknown, as both parties have remained silent on it.
24. Thus, while the Application in the lower court seeks for release of funds, the present one seeks for stoppage of the funds. The net effect of the two Applications is therefore the same and raises the question of why the two prayers have been made in different Applications. Both applications were filed the same date, and hence one cannot ascertain which one was first in time. It is as though there was a competition to outdo one another on who can be heard first on the same issue. I read mischief on the part of the respective Advocates, and consider this an abuse of the court process.
25. In view of what I have stated in the preceding paragraph, I decline to address myself to this prayer. The lower court being the court with the primary jurisdiction on this matter, the Application in the lower court should be prosecuted. Thereafter, any aggrieved party can move this court on appeal if they so wish.
26. In the end the entire Application fails. It is dismissed with costs to the Respondent.

DATED, SIGNED AND DELIVERED AT ISIOLO THIS 24TH DAY OF JULY 2025.

S. CHIRCHIR

JUDGE.



In the presence of :

Roba Katelo- Court Assistant

Ms. Gacheru for Mr. Nkunjia for the Applicant

Mr. Kaimenyi for the Respondent

