



REPUBLIC OF KENYA



KENYA LAW
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**Kariuki v Mwandaga (Civil Appeal E059 of 2025)
[2025] KEHC 10300 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10300 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E059 OF 2025
EM MURIITHI, J
JULY 17, 2025**

BETWEEN

NICHOLUS WACHIRA KARIUKI APPELLANT

AND

JOSEPH MWAMBUI MWANDAGA RESPONDENT

(Being an appeal from the Judgment of Hon. Martha Opanga, Principal Magistrate delivered on 15th April 2025 in CMCC NO. 187 of 2022 at the Magistrate's Court at Wangu'ru)

RULING

Preliminary

1. This is a ruling on an application dated 9th May 2025 for stay of execution pending hearing and determination of the appeal from the judgment and decree of the trial court delivered on 15/4/2025. The trial court upon delivery of the judgment granted a stay of execution for 30 days and this application was consequently file without any delay and within the period of stay by the trial court. The Court also notes that the appellant has filed its Memorandum of Appeal within the period of thirty days from the date of the decree or order appealed against, as prescribed under section 79G of the [Civil Procedure Act](#) and Order 42 Rule 1 of the Civil Procedure Rules.

The application and test for stay of execution

2. The Court has considered the application for stay of execution of decree of the trial court pending appeal on the test set out in Order 42 Rule 6 of the Civil Procedure Rules
3. The decretal amount was the not-insubstantial sum of Ksh.4,602,000/- together with costs of 187,000/- and interest in a personal injury case where the court found liability on the Defendant/ Appellant at 100% and multiple injuries with a 50% incapacity on the Plaintiff/Respondent herein.



4. Despite the applicant's specific expression of fear of the Respondent's inability to reimburse any payments in the event of a successful appeal, the Respondent's replying Affidavit is silent on his means to refund. It is easy to find a substantial loss in the matter, if the huge amount of the decretal sum were to be executed and the appellant, if successful, were unable to obtain or recover a refund. The appeal will have rendered nugatory.
5. The Respondent urges that the appeal is frivolous and, however, suggests should the court be minded to grant stay that a condition for the deposit into a joint interest earning account as security for his fruits of judgment be ordered.
6. It is clear from the Memorandum of Appeal dated 12/5/2025 that the appellant is only partially dissatisfied with the Judgment of the trial court and the appeal relates to quantum of general damages of 4,000,000/-, award of 200,000/- for future expenses and special damages of 402, 000/-, which he challenges as being manifestly high and excessive awards.
7. The appeal cannot be said to be frivolous as an inordinately high award is one of the grounds for the interference with the discretion of a trial court in an award of damages. See *Butt v Khan* [1978] KECA 24 (KLR); and *Kemfro Africa Limited t/a "Meru Express Services (1976)" & another v Lubia & another (No 2)* [1985] KECA 137 (KLR) and *Shabani v. City Council of Nairobi* (1985) KLR 516.
8. An arguable appeal need not be one that must succeed. In *Cabinet Secretary, Ministry of Health v Aura & 13 others (Civil Appeal (Application) E565 of 2024) [2024] KECA 1195 (KLR) (20 September 2024) (Ruling)* the Court of Appeal reiterated that -

“An arguable appeal is not one that must necessarily succeed. It is enough that it simply raises a matter that is not frivolous and which deserves further consideration at a hearing of the main appeal.”

Determination

9. The Court must seek a balance of the rights of the parties and uphold is the appellant's right to appeal and secure the respondent's right to enjoy the fruit of the judgment as may finally be decreed on appeal to be binding on the appellants.
10. The appellant urges, and the supporting affidavit is sworn by the Legal Officer Britam Insurance Company Limited, that he is covered by a reputable insurance company which is able to pay the decretal sums finally adjudged due from him.
11. In abundance caution called for in these matters of recovery from Insurance companies, the Court will direct that half (50%) of the decretal sum be deposited in a joint interest earning account in the joint names of the counsel for the parties.

ORDERS

12. Accordingly, for the reasons set out herein, the Court finds merit in the application for stay of execution pending appeal, which is granted in the following terms:
 1. A stay of execution of the judgment and decree of the trial court of 15th April 2025 in Wang'uru CMCC No. 187 of 2022 is granted pending the hearing and determination of the appeal herein.
 2. The appellant shall deposit half (50%) of the decretal sum in a joint interest earning account in the names of the advocates for the parties within the next thirty (30) days.



3. The Appellant shall file the Record of Appeal within the next sixty (60) days.
4. Mention for directions on appeal on 7/10/2025.
13. The costs of the application shall be costs in the appeal.

Order accordingly.

DATED AND DELIVERED THIS 17TH DAY OF JULY 2025.

EDWARD M. MURIITHI

JUDGE

Appearances

Mr. Kipngetich for Appellant/Applicant.

Mr. Kimori for Mr. Mwangi for the Respondent.

