



REPUBLIC OF KENYA



KENYA LAW
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**Kariuki v Njoroge (Civil Case E002 of 2025)
[2025] KEHC 13150 (KLR) (Civ) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13150 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA**

**CIVIL
CIVIL CASE E002 OF 2025**

**KW KIARIE, J
SEPTEMBER 25, 2025**

BETWEEN

MERTIN NDEGWA KARIUKI APPELLANT

AND

DAVID NJOROGE RESPONDENT

RULING

1. The appellant/applicant herein moved the court through a Notice of Motion dated the 18th day of February 2025. It was brought under sections 79 G, 3A, 3B, and 3C of the *Civil Procedure Act*. The applicant is seeking the following orders:
 - a. This honourable court be pleased to certify that this application is of utmost urgency and service be dispensed with at the first instance.
 - b. This court be pleased to grant the applicant a temporary stay of execution pending the hearing of this appeal against the ruling of Honourable C.W. Wanjala, resident magistrate at Engineer Law Courts on 13th February 2025, being a case from E083 of 2023
 - c. The respondents and their agents be restrained from selling, proclaiming or interfering with the appellant's goods pending the hearing of this appeal.
 - d. The memorandum of appeal be deemed as duly filed;
 - e. Costs of this application be provided for.
2. The application was premised on the following grounds:
 - a. That application is supported by six grounds on the face of the memorandum of appeal herein thereof among them, materially, that the appeal has good chances of success.



- b. That the appellant's goods have been proclaimed and a decree issued, and the auctioneers are likely to auction the appellant's goods, thus making the appeal nugatory and an academic exercise, as the same will have been overtaken by events.
 - c. That we pray that the appeal be deemed as a stay of any execution by the respondents
 - d. That the application is brought in good faith and as such no prejudice shall be suffered by the Plaintiff if the application is allowed.
 - e. That the applicant is willing to abide by any reasonable and just consideration that this court may impose in allowing this application.
 - f. That it is in the interest of justice to allow the application.
3. The respondent opposed the application on the following grounds:
- a. Falsehoods support the application.
 - b. The application lacks merit.
4. The applicant seeks a stay of execution of the orders issued in the ruling dated February 13, 2025. It is trite law that an appeal does not operate as a stay of execution. Order 42 Rule 6 of the Civil Procedure Rules states as follows:
- No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the court appealed from may order but, the Court Appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
5. The purpose of issuing an order for a stay of execution was explained in the case of RWW vs EKW [2019] eKLR, as follows:
- The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded, and the appeal, if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.
6. The applicant has not made any offer to the respondent for the stay of execution. After considering all the facts of this case, I make the following orders:
- a. The applicant is to deposit the decretal amount in a joint interest-earning account within 30 days of the ruling.
 - b. Failure to comply, the respondent will be at liberty to execute .

DELIVERED AND SIGNED AT NYANDARUA, THIS 25TH DAY OF SEPTEMBER 2025

KIARIE WAWERU KIARIE

JUDGE

