



Coaches & another v Karanja (As Personal Representative and/or Administrator of the Estate of Solomon Karanja Njuguna) (Miscellaneous Civil Application 48 of 2023) [2024] KEHC 843 (KLR) (1 February 2024) (Ruling)

Neutral citation: [2024] KEHC 843 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
MISCELLANEOUS CIVIL APPLICATION 48 OF 2023
JK SERGON, J
FEBRUARY 1, 2024**

BETWEEN

CLIMAX COACHES 1ST APPELLANT

CHARLES KIRAGU 2ND APPELLANT

AND

MARY WANJIRU KARANJA (AS PERSONAL REPRESENTATIVE AND/OR ADMINISTRATOR OF THE ESTATE OF SOLOMON KARANJA NJUGUNA) RESPONDENT

RULING

1. The Application coming for consideration in this ruling is a notice of motion dated 15th December, 2023 seeking the following orders:
 - i. Spent
 - ii. That this Honourable Court be pleased to order a stay of execution of the judgment/decreed dated 6th December, 2023 vide Kericho CMCC No. 205 Of 2021, Mary Wanjiru Karanja (suing as personal representative and/or administrator of the estate of Solomon Karanja Njuguna V Climax Coaches & Charles Kiragu pending hearing and determination of this application inter-partes.
 - iii. That this Honourable Court be pleased to order a stay of execution of the judgment/decreed dated 6th December, 2023 vide Kericho CMCC No. 205 Of 2021, Mary Wanjiru Karanja (suing as personal representative and/or administrator of the estate of Solomon Karanja Njuguna V Climax Coaches & Charles Kiragu pending hearing and determination of Kericho Hcca No. E048 Of 2023



- iv. That this Honourable Court be pleased to order that the Appellant furnishes security in the form of a bank guarantee for the decretal sum of Kshs. 1,750,000/= pending hearing and determination of this appeal.
- v. That the costs of this application be provided for.
2. The Application is based on the grounds on the face of it and supported by the affidavit of Charles Kiragu the 2nd appellant and insured of motor vehicle registration number KCR 169P which is the subject of this case.
3. The 2nd appellant stated that judgment was delivered on 6th December, 2023 vide Kericho CMCC 205 of 2021 Mary Wanjiru Karanja (suing as person representative and/or administrator of the estate of Solomon Karanja Njuguna v climax Coaches & Charles Kiragu where the appellants were found 100% liable and the respondent awarded a sum of Kshs. 1,750,000/= and a period of 30 days stay granted which period is set to lapse therefore exposing them to imminent risk of execution proceedings.
4. The 2nd appellant stated that he was aggrieved by the said judgment on quantum and instructed his advocates on record to lodge an appeal against the judgment vide Kericho HCCA No. E048 of 2023.
5. The 2nd appellant stated that it is trite law that an appeal does not operate as a stay of execution and that the appellant's movable properties were exposed to execution proceedings by way of proclamation and/or attachment.
6. The 2nd appellant was apprehensive that the respondent would proceed to proclaim their property thus rendering the appeal nugatory.
7. The 2nd appellant stated that his insurer M/s Directline Assurance Co. Ltd is ready and willing to offer security in the form of a bank guarantee for the full decretal sum of Kshs. 1,750,000/= pending hearing and determination of the appeal.
8. The 2nd appellant contended that the respondent is a man of straw and will not be able to refund the decretal sum should he execute and thereafter if the appeal succeeds as his financial capabilities are unknown.
9. The 2nd appellant stated that they have come to court within a reasonable period and without undue delay and further that the instant application will not occasion any prejudice to the respondent as the same can be compensated by an award of costs.
10. The respondent opposed the application and filed a replying affidavit and stated that she was aware that judgment was entered in her favour and the court awarded her a decretal sum of Kshs. 1,750,000/=.
11. The respondent contended that the appellant did not produce any documents and/or call any witnesses during trial and therefore forfeited the right to present an arguable appeal.
12. The respondent contended that the appellant has not specifically demonstrated substantial loss they will incur should stay orders not be granted.
13. The respondent therefore proposed that should this court be inclined to grant the stay orders sought, the appellants should be directed to deposit the security in a joint interest earning account held in the joint names of counsel or to deposit the entire security in court as opposed to tendering a bank guarantee.
14. The respondent was adamant that the instant application lacks merit and ought to be dismissed with costs as the appellants were trying to deny her the fruits of litigation.



15. I have considered the pleadings by the parties and I find that the sole issue for determination put forward by both parties to be as follows:
- i. Whether the appellants are entitled to stay of execution of the judgment and /or decree delivered on 6th December, 2023
16. On the issue of stay of execution of judgment and decree in Kericho CMCC no. 205 of 2021, Mary Wanjiru Karanja (suing as personal representative and/or administrator of the estate of Solomon Karanja Njuguna V Climax Coaches & Charles Kiragu the relevant provision of the law is order 42 rule 6 (2) of the *Civil Procedure Rules*. I wish to refer to the case of *Halai & Anor v Thornton & Turpin (1963) LTD* [1990] eKLR where the Court of Appeal at Nairobi observed as follows; “Thus, the Superior Court’s discretion is fettered by three conditions. Firstly the applicant must establish a sufficient cause; secondly the court must be satisfied that substantial loss would ensue from a refusal to grant a stay; and thirdly the applicant must furnish security. The application must, of course, be made without unreasonable delay.”
17. I find that appellants have met the conditions for stay pending appeal as stipulated in order 42 rule 6 (2) of the *Civil Procedure Code* and ably demonstrated that there is sufficient cause, they will suffer substantial loss and that they are willing and ready to offer security which is a mark of good faith.
18. Accordingly, I find that the application dated 15th December, 2023 is meritorious and I hereby order a stay of execution of judgment and decree in Kericho CMCC No. 205 Of 2021, Mary Wanjiru Karanja (suing as personal representative and/or administrator of the estate of Solomon Karanja Njuguna V Climax Coaches & Charles Kiragu pending hearing and determination of the intended appeal on condition that the;
- i. Appellants should deposit the entire decretal sum into an interest earning account in a reputable commercial Bank, to be held by both advocates for the parties to this appeal, within 45 days of this ruling.
 - ii. Costs of this application to abide in the appeal.

DATED, SIGNED AND DELIVERED AT KERICHO THIS 1ST DAY OF FEBRUARY, 2024

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J. K. SERGON

JUDGE

In the presence of:

C/Assistant – Rutoh

Morata for the Respondent

No Appearance for the Appellant

