



**Osienna v Wamalwa (Civil Appeal E160 of 2023)  
[2024] KEHC 901 (KLR) (5 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 901 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E160 OF 2023  
RE ABURILI, J  
FEBRUARY 5, 2024**

**BETWEEN**

**VINCENT PAUL OTIENO OSIENYA ..... APPELLANT**

**AND**

**WINNY BENTAH MACHMA WAMALWA ..... RESPONDENT**

**RULING**

1. The application for determination is whether this court should grant a stay of execution of decree issued in the lower court pending the hearing and determination of this appeal. Both parties' counsel are amenable to the court granting the Appellant herein an order of stay of execution of decree in Kisumu Chief Magistrate's Civil Case No. 157 of 2020 determination of this appeal. The stay, however, is conditional upon the Appellant depositing security for the due performance of decree as contemplated in Order 42 Rule 6(2) of the [Civil Procedure Rules](#)
2. Nonetheless, the parties are not agreeing on what mode of security to be deposited. As the appeal is only against quantum of damages awarded to the Respondent/Decree holder; now that the Appellant contests the injuries suffered by the Respondent, especially the fracture but concedes that the Respondent sustained soft tissue injuries; I make the following order, balancing the interests of the Appellant's right of appeal which if successful should not be rendered nugatory and the Respondent's right to enjoy the fruits of his lawfully obtained judgment in the lower court:
  - a. That there is hereby granted to the Appellant herein a stay of execution of decree in Kisumu CMCC No. 157 of 2020 pending the hearing and determination of this appeal conditional upon:\_
    - i. The Appellant paying to the Respondent a sum of Kshs.300,000 being part of the decretal sum awarded in the above case within 21 days of today.



- ii. That the entire balance of the decretal sum together with taxed costs shall be deposited in a joint interest earning account to be opened and operated by both parties' law firms of Kimondo Gachoka & Company Advocates and Geoffrey O. Okoth & Company Advocates within 30 days of today, in a reputable Commercial Bank acceptable to both parties.
  - b. In default, execution to issue.
  - c. The Appellant to Fastrack the filing of a record of appeal within 30 days of today.
  - d. Costs shall be in the appeal herein.
  - e. The application dated 16<sup>th</sup> January 2024 is spent.
3. Mention on 28<sup>th</sup> March 2024 to confirm compliance.
4. Ruling to be typed. I so order.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 5<sup>TH</sup> DAY OF FEBRUARY, 2024**

**R. E. ABURILI**

**JUDGE**

