



**Wandera & another v Lumwaji & another (Miscellaneous Civil Application
E003 of 2024) [2024] KEHC 896 (KLR) (6 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 896 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CIVIL APPLICATION E003 OF 2024
RE ABURILI, J
FEBRUARY 6, 2024**

BETWEEN

TABITHA WANDERA 1ST APPLICANT

MWANGI DANIEL GATITHU 2ND APPLICANT

AND

STEPHEN CHAHAJI LUMWAJI 1ST RESPONDENT

DANIEL MBUGUA NJOROGE 2ND RESPONDENT

RULING

1. The Applicant's application dated January 12, 2024 seeks for orders of stay of execution of decree in Kisumu CMCC No. E555 of 2021 pending hearing and determination of the intended appeal.
2. In addition, the applicants sought for leave to appeal out of time from the judgment and decree of the lower court in the above matter which was rendered on September 28, 2023.
3. The application is not opposed save for the conditions on the depositing of security for the due performance of decree as contemplated in order 42 rule 6(2) of the [Civil Procedure Rules](#).
4. Whereas the Respondent urges for payment of ½ the decretal sum as awarded and the balance be deposited in an interest earning account to be held by both parties' counsel, the Applicant proposed to give a Bank Guarantee or to pay Kshs.60,000 because the injuries sustained by the Respondent were soft tissue and that the applicant is challenging quantum of damages awarded.
5. I have considered the arguments by both counsel on the matter and especially the conditional stay. I make the following orders:
 1. The Applicant is hereby granted leave to file and serve a Memorandum of Appeal out of time. The appeal shall be filed and served within 14 days of today.



2. There be and is hereby granted a stay of execution of decree in Kisumu CMCC No. 555 of 2021 pending the filing, hearing and determination of the intended appeal subject to the applicant herein paying to the Respondent through their advocate Ms. Staussi Asunah & Oluoch & Company Advocates, a sum of Kshs.100,000 being part of the award of damages made in the lower court, within 21 day of today. The balance thereof plus costs of the suit in the lower court shall be deposited in a joint interest earning account to be opened in a reputable Commercial Bank and to be held by Ms. Kimondo Gachoka & Company Advocates and Staussi Asunah & Oluoch and Company Advocates until further orders of this court; and within 21 days of today.
3. In default, execution to issue.
6. This Ruling and order to be typed and issued.
7. Costs shall be in the appeal.
8. This file is hereby closed.
9. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 6TH DAY OF FEBRUARY, 2024

R. E. ABURILI

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JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

