



**Karuri & 6 others v Karuga (Civil Appeal E089 of 2023)
[2024] KEHC 4422 (KLR) (12 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4422 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL E089 OF 2023
SM MOHOCHI, J
APRIL 12, 2024**

BETWEEN

**CHARLES NDUNGU KARURI 1ST APPELLANT
SECONDARY SCHOOL SISTER ROSE WANGUI, VHM JOHN NJOROGE
DAVID METHU SISTER ESTHER WAIRIMU, LSOSF MARGARET NJOKI -
VERSUS- RUTH WANJIRU KARUGA.. 2ND APPELLANT
SISTER ROSE WANGUI, VHM 3RD APPELLANT
JOHN NJOROGE 4TH APPELLANT
DAVID METHU 5TH APPELLANT
SISTER ESTHER WAIRIMU, LSOSF 6TH APPELLANT
MARGARET NJOKI 7TH APPELLANT**

AND

RUTH WANJIRU KARUGA RESPONDENT

RULING

1. Before me is a Notice of Motion Application dated 9th April 2024, filed pursuant to Sections 1A, 3A, 63 (e), and 80 of the *Civil Procedure Act* and Order 42 Rule 6 (1), 50 Rule (6) of the *Civil Procedure Rules 2010*, seeking variations of the conditions imposed on the grant of orders of stay against judgment decree which included;Paying 50% of the decretal sum to the respondent not later than 8th March 2024.Furnishing a bank guarantee for the remaining 50% of the decretal sum.The Appellants were to cause the Appeal to be listed for directions, admission and hearing within the next Sixty (60) days from the date 9th February 2024.
2. The Application is supported by the Sworn Affidavit of Sister Grace Maria Grace dated 9th April 2024.



3. This Court has keenly read the Application and is of the humble considered opinion that the ruling dated 9th February 2024 was clear and that it is apparent that the Appellants have failed to fulfil the conditions set, I however note that Sister Maria is desirous to pay but she runs a charity that might not be able to raise the huge judgment award.
4. This Court is desirous of hearing the Appeal and shall in expediting the same certify the Application as urgent to be heard ex-parte and I have thus found favour with the same directing that the Appellants approached this Court attacking an impugned judgment and seeking to be heard, this Court gave the first direction with regard to the Appeal.
5. While the apparent laches by the Appellant would have attracted far reaching sanction of this Court, it will be in the interest of justice to allow the Application while remaining alive to the objectives of the Civil Procedure Act and duty of this Court as is prescribed under Sections 1 and 1B of the Civil Procedure Act.
6. I have carefully considered the Appellant's Application for extension stay of execution of judgment pending the hearing and determination of the Appeal and extension of time to pay the balance of the 50% decretal amount to the Respondent. This Court is alive to the serious and life-long injuries occasioned upon the Respondent requiring further future medical treatment that cannot wait for the determination of an Appeal that is to be weighed against the Applicant's right to Appeal.
7. In the result, I shall exercise my discretion in allowing the Notice of Motion dated 29th May 2023 on the following terms;
 - i. The Application is certified as urgent and its service is dispensed with in this instance.
 - ii. The Firm of Wokabi Mathenge & Co. Advocates is accordingly admitted to act for the Appellants.
 - iii. The Order of Stay of Execution of Judgment/Decree in Nakuru Chief Magistrates Court Civil Case No 1041 of 2018 delivered on the 26th April 2023, pending hearing and determination of the Appeal, on condition that the Applicants shall Pay to the Respondent 50% of the entire decretal amount a sum of Kenya Shillings Seven Million Two Hundred and Twelve Thousand two hundred and eighty-six shillings and fifty cents Kshs 7, 212, 286.50/- is hereby extended for the next Thirty (30) Days from the date hereof.
 - iv. The condition imposed on the Appellant to furnish a Bank guarantee from a reputable Bank of 50% of the entire decretal amount a sum of Kenya Shillings Seven Million Two Hundred and Twelve Thousand two hundred and eighty-six shillings and fifty cents Kshs 7, 212, 286.50/- is hereby waived as the hearing and conclusion of the Appeal shall be prioritized.
 - v. The Appellant shall serve the Application dated 9th April 2024 and these Orders upon the Respondent within 24 hours from the date hereof.
 - vi. The Order of stay against execution of judgment/decree as granted, shall automatically lapse upon default of any condition set by this court.
 - vii. The Application dated 9th April 2024 is spent with no need for further hearing.
 - viii. Mention for directions on the disposal of the Appeal shall be on the 16th of May 2024
 - ix. The Costs shall be in the cause.

It is so Ordered.



DATED, SIGNED AND DELIVERED AT NAKURU ON THIS DAY OF 12TH DAY OF APRIL,
2024.

S. MOHOCHI

JUDGE

