



Momanyi v Onsongo (Legal and Personal Representative of the Estate of Enoch Agai Kopyo) (Civil Appeal E088 of 2023) [2024] KEHC 3585 (KLR) (15 April 2024) (Ruling)

Neutral citation: [2024] KEHC 3585 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CIVIL APPEAL E088 OF 2023**

KW KIARIE, J

APRIL 15, 2024

BETWEEN

DICKSON MORIASI MOMANYI APPELLANT

AND

**EVERLYNE MWANZI ONSONGO (LEGAL AND PERSONAL
REPRESENTATIVE OF THE ESTATE OF ENOCK AGAI
KOPIYO) RESPONDENT**

RULING

1. Dickson Moriasi Momanyi moved the court through a Notice of Motion dated the 16th day of November 2023 under sections 1A, 1B, 3A and 95 of the *Civil Procedure Act*, Order 50 Rule 6 and Order 51 Rule 1 of the *Civil Procedure Rules*. He is seeking the following orders:
 - a. That this application be certified urgent, service be dispensed with, and the same be heard ex parte in the first instance.
 - b. That pending the hearing and determination of this application inter-partes, there be a stay of the ruling and/or order of the honourable Justice W. Kiarie issued herein on 23rd October 2023 requiring the applicant to deposit the decretal amount in a joint interest account.
 - c. That pending the hearing and determination of this application inter-partes an order of stay of execution of the judgment delivered on 13th September 2023 in Oyugis Civil Suit NO. 20 of 2020 – *Everlyne Mwanzi Onsongo (Legal & Personal reps to the Estate of Enoch Agai Kopyo) v Dickson Moriasi Momanyi* be and is hereby issued.
 - d. That the ruling dated 23rd October 2023 be varied, enlarged and/or extended and the applicant be ordered to deposit kshs.2,055,795/- in a joint account or court within thirty (30) days to enable the applicant eventually prosecute and finalize the appeal.



- e. That this honourable court makes any such further orders and issues any other relief it may deem just to grant in the interest of justice.
 - f. That the cost of this application be in the cause.
2. The application was premised on the following grounds:
- a. That Oyugis Civil Suit No.20 of 2020 *Everlyne Mwanzi Onsongo (Legal & Personal reps to the Estate of Enoch Agai Kopiyo) v Dickson Moriasi Momanyi* judgment was entered for kshs.4,111,590/- on 13th September 2023.
 - b. That aggrieved by the said judgment, the applicant herein filed a memorandum of appeal and an application dated 3rd October 2023 seeking stay pending appeal in Oyugis Civil suit NO.20 of 2020-*Everlyne Mwanzi Onsongo (Legal & Personal reps to the estate of Enoch Agai Kopiyo) v Dickson Moriasi Momanyi*.
 - c. That said application came up for hearing on 23rd October 2023, and a ruling delivered on the same date ordered the applicant to deposit the decretal amount in a joint account in 30 days, requiring the applicant to deposit kshs.4,111,590.
 - d. The timelines within which the applicant is to deposit the sum of kshs.4,111,590/—in a joint interest-earning account are set to lapse on or about 23rd October 2023, after which the applicant’s properties will be exposed to execution and sale of the appellant’s movable property.
 - e. The applicant is now praying that the ruling dated 23rd October 2023 be varied, enlarged and/ or extended, and the applicant be ordered to provide sufficient security and deposit half of the decretal, which is kshs.2,055,795/=, in a joint account or in court to enable the applicant to eventually prosecute and finalize the appeal.
 - f. That indeed, the applicant’s motor vehicle registration KCL 378K, whose accident of 28th April 2019 gave rise to this claim and/or suit, was at the time insured by M/s Directline Assurance Company Limited, whose statutory limit does not exceed kshs.3,000,000.00 and such even if the insurance company was to meet its statutory limit in compliance with the aforesaid court order, the applicant would still be deemed non-compliant and required to provide the blame which is unaffordable for a businessman of his stature.
 - g. That it is the applicant’s contention that security ordered under Order 42 Rule 6(2) (a) of the Civil Procedure Rules, 2010 for the due performance of the decree only ought to be sufficient and the amount of kshs.2,055,795 which is half of the decretal amount should be deemed as sufficient for the due performance of the decree herein.
 - h. That as such and in view of the foregoing, the memorandum of appeal is arguable as the appeal is on liability, and the deceased is to blame for having encroached into the lane of the applicant.
 - i. That unless this application is certified urgent, heard immediately, and the orders sought herein granted, the applicant will be deemed to have failed to comply with the orders of 23rd October 2023 and the respondent and/or the respondent’s advocates, their servants and/or agents will thus proceed with execution by moving to seize, attach and/or repossess for sale the applicant’s properties and this application and the Appeal will thus be rendered nugatory and the applicant will suffer irreparable loss and damage.
 - j. This application was made without unreasonable/inordinate delay.
 - k. In any event, this application has been filed in a timely manner.



- i. This application should be granted in the interest of equity and justice.
3. The respondent opposed the applications and stated:
 - a. That the application lacks merit.
 - b. That it was brought in bad faith.
4. The reasons advanced for varying the orders issued on October 23rd 2023, do not appear coherent. The applicant appears to be saying that they can only deposit half the decretal amount, for that is what they believe is their liability.
5. The order that was issued considered the interests of both parties. Depositing the decretal amount in a joint interest-earning account is a win-win situation for both parties. If I follow the applicant's proposal, I will be accused of having an opinion on the appeal before hearing both parties.
6. The application is dismissed with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 15TH DAY OF APRIL 2024

KIARIE WAWERU KIARIE

JUDGE

