



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kinoti v Mutua (Civil Appeal E362 of 2022)  
[2023] KEHC 1631 (KLR) (Civ) (10 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1631 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E362 OF 2022**

**JN MULWA, J**

**MARCH 10, 2023**

**BETWEEN**

**KENNETH KOOME KINOTI ..... APPELLANT**

**AND**

**MOSES MUNYWOKI MUTUA ..... RESPONDENT**

*(Being an appeal from the Chief Magistrate's Court at Milimani Civil Suit  
No. E 9725 OF 2021 delivered on 13th May, 2022 by Hon. G. Songomo PM))*

**RULING**

1. Before the court is an application by the Appellant dated June 3, 2022, brought under provisions of Order 42 Rule 6 of the [Civil Procedure Rules](#) among others. The Appellant seeks an order of stay of execution of the trial court's judgment rendered on May 13, 2022 pending hearing and determination of the Appeal filed herewith.
2. The application is premised on grounds stated on its face and supporting affidavit sworn by one Lydia Mwangi a Legal Officer with CIC Insurance Group, insurers of the accident vehicle. The decretal sum is stated as Kshs 3,503,550/=; and being dissatisfied with the award, this Appeal was lodged.
3. In response to the application, grounds of opposition were filed on June 29, 2022, and a replying affidavit to the same.
4. On September 29, 2022 when the application came up for interpartes hearing before me, the Respondent told the court that it would not oppose the application if the decretal sum is deposited in court, as liability was at issue and subject of the Appeal. The Applicant however had a different opinion, that CIC Insurance is a strong company that would pay the decretal sum if so required without any difficulty.



5. I have considered the judgment of the trial court and the parties' oral arguments.

As a temporary measure, a sum of Kshs 1 million was deposited in court by the appellant pending hearing and determination of this application interpartes.

The record of appeal has also been filed. There is no serious objection at all by the Respondent to the grant of the orders sought.

6. Consequently, the application dated June 3, 2022 is allowed as hereunder:

- a. That there shall be a stay of execution of the trial court's judgment delivered on May 13, 2022 pending the hearing and determination of the Appeal.
- b. That the sum of Kshs 1 million deposited in court shall be released to the Appellant's advocates upon which it will be deposited in a joint interest earning account in a reputable bank in the parties advocates names to await the outcome of the appeal; this exercise shall be undertaken within the next 30 days of this ruling.
- c. The record of Appeal having been filed and served, it is hereby admitted for hearing.
- d. Parties shall attend court for pretrial directions on May 8, 2023 before any judge as may be assigned.
- e. Costs of this application shall abide by the outcome of the appeal.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 10<sup>TH</sup> DAY OF MARCH, 2023**

**J. N. MULWA**

**JUDGE**

