



**Abdalla & 2 others v Musumba & another (Suing as legal representatives
of the Estate of Victor Musungu Mudidi (Deceased)) (Civil Appeal
E013 of 2023) [2023] KEHC 27334 (KLR) (18 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 27334 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CIVIL APPEAL E013 OF 2023
SN MUTUKU, J
SEPTEMBER 18, 2023**

BETWEEN

**FREDERICK ONYANGO ABDALLA 1ST APPELLANT
AYUB SAVULA 2ND APPELLANT
SUNDAY PUBLISHERS LIMITED 3RD APPELLANT**

AND

**NDIZIAH MAUREEN MUSUMBA 1ST RESPONDENT
TIMOTHY LIHANDA JADAVELA 2ND RESPONDENT
SUING AS LEGAL REPRESENTATIVES OF THE ESTATE OF VICTOR
MUSUNGU MUDIDI (DECEASED)**

RULING

1. The Appellants (the Applicants) have brought this Notice of Motion (the Applications) dated 9th March 2023 seeking stay of execution of the judgement entered on 22nd July 2021 in Ngong Civil Case No. 171 of 2020, Ndizah Maureen Musumba & another v Frederick Onyango Abdalla & 2 others pending the hearing and determination of this application and secondly, pending the hearing and determination of the appeal filed herein. They are also seeking costs of the application.
2. The Application is supported by grounds found on the face of it and in the supporting affidavit sworn by the 2nd Applicant on 9th March 2023. The Applicants have advanced grounds in support of the application that they were condemned unheard by denial to call their witnesses; that the Respondents have instituted a declaratory suit against the insurer to enforce the judgment in Ngong CMCC No. E249 of 2022 and that the Applicants are apprehensive that the Respondents shall proceed to execute the judgment to the detriment of the Appellants.



3. The Appellants have filed submissions in support of the application. However, the application is not opposed. The only issue Mr. Mulupi learned counsel for the Respondents raised was the payment of security. He told the court that the Appellants can deposit the decretal sum in an interest-earning account in joint names of the advocates for both parties to allow parties to proceed with the main Appeal.
4. I have considered this matter. [Order 42 Rule 6](#) provides that:
 - (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
 - (2) No order for stay of execution shall be made under subrule (1) unless—
 - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
5. I have considered this matter and the fact that it is not opposed, the only issue being deposit of security. I will allow the Notice of Motion dated 9th March 2023 and grant the following orders:
 - i. That stay of execution of the judgment entered on 22nd July 2021 by Honourable P. Achieng (SPM) in Ngong Civil Suit No. 171 of 2020, Ndiziah Maureen Musumba & another v. Frederick Onyango Abdalla & 2 others is hereby granted pending the hearing and determination of the Appeal.
 - ii. The Appellants shall deposit half the decretal sum as security in an interest earning account in the joint names of the advocates for both parties within 45 days after delivery of this ruling.
 - iii. The Appellant shall file and serve a Record of Appeal within 60 days from the date of this ruling.
 - iv. This matter shall be mentioned on a date to be fixed in court on the date of this ruling.
 - v. Costs shall be in the cause.
6. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 18TH SEPTEMBER, 2023.

S. N. MUTUKU

JUDGE

