



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Gichaba v Kirueya & another (Civil Appeal E153 of 2023)  
[2023] KEHC 23262 (KLR) (9 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23262 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CIVIL APPEAL E153 OF 2023  
SM MOHOCHI, J  
OCTOBER 9, 2023**

**BETWEEN**

**WILFRED MOKEMA GICHABA ..... APPELLANT**

**AND**

**CECILIA WANJIRU KIRUEYA ..... 1<sup>ST</sup> RESPONDENT**

**CLEOPAS MATENGA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Applicant by Notice of Motion pursuant to Sections 1A, 1B, and 3A of the *Civil Procedure Act*, Orders 42 Rule 6 (1) & 2) and 51 Rule 1 of the *Civil Procedure Rules* moves this Court for the following Orders;
  - i. spent.
  - ii. spent.
  - iii. the court, be pleased to grant an order of stay of execution of the judgment and/or the decree delivered on June 16, 2023 and all consequential orders arising therefrom pending the hearing and determination of the appeal lodged by the appellant/applicant herein *vide* Nakuru HCCA No. E153 of 2023.
  - iv. the court, be pleased to issue an order for provision of a bank guarantee of the entire decretal sum awarded by the trial court as security pending hearing and determination of the appeal lodged *vide* Nakuru HCCA no. E153 of 2023.
  - v. the court, be pleased to issue any other order as it may deem just, appropriate and expedient in the interest of justice.



- vi. costs of this application be provided for.
2. the application is supported by a sworn Affidavit of Wilfred Mokema Gichaba dated 19<sup>th</sup> July 2023, and is based on the following grounds:
    - a. The judgment was delivered on 16/6/2023 in favors of the Respondent as against the Appellant/Applicant in the following terms; liability 100% in favor of the Respondent against Applicant; general damages of Kshs. 200, 000/=; special damages of Kshs. 10, 650/=; costs of the suit and interest was awarded to the 1<sup>st</sup> Respondent.
    - b. The Appellant/Applicant being aggrieved by the said judgment delivered on 16/6/2023 by PW Nyotah (SRM) has preferred an Appeal against the determination on quantum vide Nakuru HCCA No. E153 of 2023.
    - c. The Appeal raises triable issues and has high chances of success.
    - d. The Appellant/Applicant was granted la 30 days stay of execution from the date of the judgment, which has since lapsed.
    - e. The Appellant/Applicant is apprehensive that the 1<sup>st</sup> Respondent will commence execution proceedings against him to his detriment.
    - f. The Appellant/Applicant stand to suffer substantial loss and damage, if orders sought herein are not granted and further that the Appeal will be rendered nugatory.
    - g. The Respondents will not be prejudiced in any way if the orders sought herein are granted as prayed.
    - h. That it is in the interest of Justice that the execution of Judgment and/or decree delivered on June 16, 2023 be stayed to pave way for the hearing and determination of the Appeal.
    - i. That there will be no irreparable damage occasioned to the Respondents if the orders sought herein are granted.
    - j. The judgment subject matter herein is substantial and should the execution process commence the Appellant/Applicant stand to suffer irreparable loss and prejudice as the ability of the Respondent herein to refund the decretal amount is unknown.
    - k. The Appellant/Applicant are willing and ready to furnish a bank guarantee for the entire decretal sum pending the hearing and determination of the Appeal; as a condition for allowing this application.
    - l. That this Court has powers to grant the orders sought herein in the interest of justice and fairness.
  3. On the 21<sup>st</sup> July 2023, this Court directed that the Application was to be heard and determined on the basis of written submissions and parties were to file their written submissions within fourteen days.

### **Applicant's Case**

4. The Applicant filed his written submissions on the 3<sup>rd</sup> October 2023 contends that the principals for grant of stay of execution is derived from Order 42 Rule 6(2) of the Civil procedure rules and well established judicial precedence as was held In Elena D. Korir v Kenyatta University [2014] eKLR. Justice Nzioki Wa Makau, who placed reliance in the case of Halai & Another v Thorton & Turpin



(1963) Ltd [1990] KLR}65 where the Court of Appeal Gicheru JA, Chesoni & Cockar Ag. JA (as they all were) held that: -

“The High Court’s discretion to order stay of execution of its order or decree is fettered by three conditions, namely: - Sufficient cause, Substantial loss would ensue from a refusal to grant stay, the applicant must furnish security, the application must be made without unreasonable delay. In addition, the applicant must demonstrate that the intended appeal will be rendered nugatory if stay is not granted.”

5. It is the Appellant/Applicant submission that he has met the conditions required for stay to be granted and that, failure to grant the stay of execution would render the Appeal nugatory and an exercise in futility as the 1<sup>st</sup> Respondent would have already executed the decree and attached the Applicant’s motor vehicle which is his source of income and livelihood.

6. Reliance is placed on the case of Hassan Guyo Wakalo v Straman EA Ltd [2013] eKLR in which it was held thus;

“In addition, the applicant must prove that if the orders sought are not granted and his appeal eventually succeeds, then the same shall have been rendered nugatory. These twin principles go hand in hand and failure to prove one dislodges the other”

7. The Applicant submits that the judgment is of a substantial amount and is apprehensive that if the 1<sup>st</sup> Respondent is paid, he may deal with the same in a manner prejudicial to the Applicant and if the appeal is successful, the Applicant might not be able to recover the same from the 1<sup>st</sup> Respondent.

8. The Applicant further in his application dated 19<sup>th</sup> July, 2023 has undertaken to issue a bank guarantee with a reputable bank as attached in our application. This goes to show that the Applicant is willing to satisfy stay conditions and offer security to the 1st Respondent and thus the 1st Respondent would not suffer loss.

9. The Applicant contends that, the 1<sup>st</sup> Respondent will not be in a position to refund the money paid to them (if any) in the event the appeal succeeds.

10. Further reliance is placed in the case of Jackline Tabitha Kinyuav Jacob Mugo Nyaga & Another [2019] eKLR where the Court stated;

Regarding the proposal by the respondent that the applicant deposits the whole of the decretal amount with half of it being released to the respondent, it is my considered view that the interests of justice will not be served if such an order is granted. I have already said that refund cannot be guaranteed in the event of a successful appeal.

The Court went ahead to make the following orders

- a) That stay of execution of the judgment delivered on 22/01/2019 in Embu CMCC NO. 246 of 2017 is hereby granted.
- b) That the applicant is hereby ordered to deposit as security half of the Decretal Amount in the names of the advocates for the parties within thirty (30) days and in default, the stay orders to be automatically vacated.
- c) That costs be in the cause.



11. The Applicant further cites the case of *Auto Selection (K) Limited v Elizabeth Nduku Mbisu & 2 others* [2019] eKLR where the Court noted and I quote;
  - a. “The order for stay of execution is hereby reinstated
    - a. The applicant to deposit half of the decretal sum in a joint interest earning account in the joint names of the advocates on record.
    - b. The applicant to deposit a Bank Guarantee in Court as security for the balance of the decretal sum Conditions (b) and (c) to be complied with, within 30 days from the date of this ruling failing which the stay order shall lapse.”
12. It is submitted that the Applicant has established that he will suffer substantial loss if the intended execution is not stayed and that the Court should consider the cited authorities in allowing the application.
13. The Applicant is ready and willing to furnish the Court with a bank guarantee pending the hearing and determination of the Appeal Nakuru HCCA No. E153 Of 2023. In the event the appeal succeeds the Applicant is apprehensive that the 1<sup>st</sup> Respondent will not be in a position to refund the money to the Applicant which will be prejudicial to him. The Applicant prays that he be allowed to furnish the Court with a bank guarantee pending the hearing and determination of the appeal.
14. Reliance is placed on the case of *Harit Sheth Advocate v Shamas Charania* - Civil Appeal No. 68 of 2008, the Court held: -

“The principal aims of the overriding objective include, the need to act justly in every situation the need to have regard to the principle of proportionality and the need to create a level playing ground for all the parties coming before the Courts by ensuring that the principle of equality of arms is maintained and that as far as it is practicable to place the parties on equal footing.”
15. Further reliance is placed on the case of *Bernard Ontita Zebedeo v Julius Nyamwega Ontere* [2022] eKLR where the Appellate Court while ordering deposit of bank guarantee had this to say:

“In the end the motion dated 2nd December 2021 is found to be meritorious. It is allowed. Consequently, an order for stay of execution pending appeal is granted on condition that the appellant provides a bank guarantee from a reputable bank as security for the decretal Sum pending the hearing and determination of the Appeal. In default the stay order shall automatically lapse”
16. The Applicant being dissatisfied with the said judgment delivered on 16<sup>th</sup> June, 2023, filed an appeal and this application on 19th July, 2023 before the stay period that had been granted lapsed therefore the application was brought within reasonable time and without delay and would not be prejudicial to the 1<sup>st</sup> Respondent.
17. The Applicant contends that, the Appeal raises substantial issues for determination and hence has high chances of succeeding, further the judgment is of a substantial amount he is at risk of execution which would render the Appeal nugatory. Additionally, should the decretal amount be paid out to the 1<sup>st</sup> Respondent and the appeal succeeds, the same would be difficult to recover as the financial capability of the 1<sup>st</sup> Respondent is unknown It is therefore in the interest of justice that this application be allowed as prayed.



## Respondents Case

18. The Respondent opposed the Application by filing a replying Affidavit by John Ndungu Njuguna date 2<sup>nd</sup> August 2023 together with 1<sup>st</sup> Respondent's written submissions dated 22<sup>nd</sup> August 2023 urging that the appropriateness of security pending appeal as a basis of stay of execution of judgment/decree is a matter of discretion of the Court and reliance is placed on the case of *Nyamwaya v Ondera* (Civil Appeal E071 of 2021) [2022] KEHC 619 (KLR) (9 May 2022) with the holding that, the Court's discretion has to be exercised within the requisite parameters while taking into consideration the overriding objective in civil litigation as was held in the case of *Samuel Ndungu Mukunya v Nation Media Group Limited & Another* [2016] eKLR:

A Stay pending appeal is a discretionary remedy and in dealing with an application like the one before the Court, its discretion is wide but at the same time such discretion should be exercised with the overriding objective in civil litigation, the Court is now enjoined to take into account substantive and proportionate justice, act fairly and balance the relative interests of all the parties...Some of the principal aims of the overriding objective include the need to act justly in every situation; and the need to have regard to the principle of proportionality and the need to create a level playing ground for all the parties coming before the Courts by ensuring that the principle of equality of all is maintained and that as far as it is practicable to place the parties on equal footing.

19. That therefore security ordered by the Court must accord with the principle of proportionality and the need to create a level playing ground for all the parties by reconciling and striking a balance between their respective and competing interests and rights. Reliance was placed in the case of *Mutiso & another v Ngoma* (Civil Appeal E109 of 2021) [2021] KEHC 344 (KLR) (14 December 2021) (Ruling):

The discretionary relief of stay of execution pending appeal is designed on the basis that no one would be worse off by virtue of an order of the Court; as such order does not introduce any disadvantage, but administers the justice that the case deserves. This is in recognition that both parties have rights; the Appellant to his appeal which includes the prospects that the appeal will not be rendered nugatory; and the decree holder to the decree which includes full benefits under the decree. The Court in balancing the two competing rights focuses on their reconciliation...

20. The 1<sup>st</sup> Respondent urges caution by the Court, not to be disadvantaged by the Stay Order Sought, cites the case of *James Wanganga v Wilberforce Situma Mulati* [2021] eKLR where the Court held that, in all fairness and unless a Respondent has been adjudged a pauper, the Court must ensure the security balances rights of both parties in that the filed Appeal is not rendered nugatory and the successful party enjoys the fruits of the judgment. also the case of *Peter Osoro Omagwa & another v Bathseba Mwangi Maikini* [2021] eKLR):-As a principle a successful party is entitled to the fruits of his judgement. That must however be balanced against the applicant's right to appeal. No party should be worse off by virtue of an order of stay of execution given the rights of the parties on the one hand to pursue their appeal and on the other hand to benefit from the fruits of their judgment
21. As to whether the proposed bank guarantee suffices as adequate security? The 1st Respondent posits that, the Applicants proposed security by way of a bank guarantee is not appropriate for the following reasons among others;
22. Firstly, the proposed bank guarantee is dated 18<sup>th</sup> February 2022 and Clause 2 provides that the facility is for one year only with an option to renew. Therefore, it goes without saying the same expired way



back on 18<sup>th</sup> February 2023 as no evidence has been availed to Court to the effect that the same was renewed. As such, the same does not suffice as adequate security for the Appeal herein.

23. On the other hand, it will take more than one year to have the Appeal herein heard as even proceedings are yet to be typed and hence the bank guarantee herein being limited to one year makes it unsuitable as was held in the case of *Mutiso & another v Ngoma* (Civil Appeal E109 of 2021) [2021] KEHC 344 (KLR) (14 December 2021):

On the other hand, the Court notes that the Bank Guarantee at Clause 3, its validity shall not exceed one (1) year from the date of issuance or until void hence the argument by the time the said guarantee is cancelled or becomes hence not appropriate to provide a Bank Guarantee. Despite the Court's discretion to determine that the appeal may take more than one year to conclude Security, the Court is in agreement that the Bank Guarantee may not be a suitable form of security in the circumstances.

24. It is submitted that, the Court cannot be called upon to act/order security by way of an expired/non-existent bank guarantee as was held in the case of *Nobel Trading Co. Ltd & 2 others v Peter Odhiambo Marega* [2022] eKLR cited hereinafter:

“Without prejudice to the foregoing. Clause 11 thereof gives the guaranteeing bank unilateral right/discretion to cancel the bank guarantee herein without any consultation and or regard to the rights/interest of the beneficiary. This claw-back clause in our humble view negates the value of the bank guarantee herein as a security as it makes it totally unsecure given that it can be revoked unilaterally and without any notice by the bank and which decision will leave the Respondent with no remedy at all. Most importantly, the bank guarantee herein is a private contract/agreement between Directline Assurance and the respective bank and does not recognize any other third/interested party (including Respondent) interests/rights at all and neither does it provide her with any remedy or right at all and hence should there be need to enforce the same, she will have no locus at all not being a party thereto. Similarly and Directline Assurance and the guaranteeing bank not being parties to this suit, this means that enforcement of the bank guarantee herein will now call for fresh litigation now between the Respondent, Appellants herein, Directline Assurance and the guaranteeing bank which in our view will amount to double jeopardy on the Respondent by being vexed twice for the same course of action which further diminishes its suitability as security”.

25. The 1st Respondent submits that, the bank guarantee offered, is a general one and not for this specific matter and does not provide/define the right/benefits to be enjoyed by the parties herein, the extent of funds covered therein and most importantly, whether the decretal sum herein is one of the matters covered thereunder. Without this crucial information, there is no means through which this Court can be able to gauge and or determine its adequacy/suitability with a view to order that the same be used as security. In our humble view and a bank guarantee being a Surety/guarantee given by a bank on behalf of the applicant to cover a payment obligation to a third party, it must as of necessity specify inter alia the transaction guaranteed, the third party/beneficiary thereof, his/her rights/benefits, amount involved and above all other things be free from any cover the entire period of the transaction guaranteed, be free from claw back clauses precedent, be easy to invoke or collect on and be irrevocable which is lacking in this instant case.
26. That, there are no good reason(s), justification and/or hardship(s) that have been advanced as to why the Applicants/Direct line assurance should not furnish monetary Security as opposed to a bank



guarantee the subject herein being a monetary decree, reliance is placed on the case of Joel Mutuma Kirimi & another v The Standard Digital & another (2020) eKLR:

“a party seeking stay of execution must prove substantial loss it may suffer if the Order Sought is not granted. This is the cornerstone of any such application and in the instant case the only issue raised is the inability of the respondents to pay the decretal sum 1. that regard is that the Respondent may be unable to pay the decretal sum. The Applicant has clearly failed that test because the basis for the statement that the Respondents is unable to repay the decretal sum is Completely lacking... It is not for her to prove her means in any event, but for the Applicant to prove her lack of means and having failed to do so, his Application crumbles, It matters not that he filed it timeously and he is willing to deposit security, once the cornerstone is removed, the domino effect sets in.

The next issue is the security for the due performance of the decree that will be ultimately be binding upon the defendants. The defendants propose to offer a bank guarantee or an insurance bond. The plaintiff opposed the same.. In my view, there is no cogent evidence to show that the defendants have been so affected by Covid-19 that they cannot raise the security of Kshs.8,800, 000/-. In this regard, the offer of guarantee or bond is declined.”

27. In conclusion the 1st Respondent urge the Court to note that, the Appeal herein is on quantum only and actually on Damages for Pain and Suffering. As such and given that liability and some awards are not being contested, it is only fair and in the interest of justice that the Respondent be paid some amount pending the hearing of this Appeal which makes the Applicants proposal for a bank guarantee to secure the entire decretal amount unsuitable. We rely on the case of Julius Thurairara Muriungi v Grace Kathure [2021] eKLR):

“This Court observes that the intended appeal being one on quantum following Appellant will inevitably have to pay the Respondent some amount of money and payment to the Respondent of some amount of money will not entirely be prejudicial. Accordingly, this Court.. grants an order for stay of execution ...The Applicant shall within Thirty (30) days’ pay to the Respondent the sum of Kshs. 1, 063, 000/= being a half of the decretal sum.”

28. The 1st Respondent further placed reliance in the cases of Peter Ndirangu Waweru v Dismas Odoyo Otundoh [2021] eKLR, Anthony Mbuqua & another v Victoria Njeri Chege (Suing as the Legal Representative of the Estate of Gachanja Muchiri Kamau (Deceased) [2021] eKLR and Nancy Nduta Kiarie & another v Roseline Kimursoi [2019] eKLR where the Court held that where an Appeal is on quantum only, no harm will be occasioned to any party if the Respondent is paid some money pending the hearing and determination thereof.
29. The Court was urged to disallow the Applicant’s plea to deposit security by way of bank guarantee and direct that the half the decretal sum be paid to the Respondent and the remaining half be deposited in Court or in a joint interest earning account by both parties. This form of security in the Respondents view balances interest and rights of all parties and is the most appropriate. The Respondent pray for costs of this application.



## Analysis & Determination

30. The principles upon which this Court may grant stay of execution pending appeal are well-settled as enshrined in Order 42 Rule 6 of the [Civil Procedure Rules](#), which requires an applicant seeking a stay of execution pending appeal to demonstrate that: -
- a. Substantial loss may result to the applicant unless the order was made;
  - b. The application was made without unreasonable delay; and
  - c. Such security as the Court orders for the due performance of such decree or order as may ultimately be binding on him as been given by the applicant.
31. A stay of execution of judgment/decree should only be granted where sufficient cause is shown. In [Antoine Ndiaye v African Virtual University](#) (2015) eKLR Gikonyo J opined that: -
- “....stay of execution should only be granted where sufficient cause has been shown by the applicant. And in determining whether sufficient cause has been shown, the Court should be guided by the three prerequisites provided under order 42 rule 6 of the Civil Procedure Rules...”
32. An Order of stay of execution pending appeal is a discretion of the Court. In [Butt v Rent Restriction Tribunal](#) (1982) KLR the Court gave guidance on how such discretion should be exercised and held that: -
1. The power of the Court to grant or refuse an application for a stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal.
  2. The general principle in granting or refusing a stay is; if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal Court reverse the judge’s discretion.
  3. A judge should not refuse a stay if there are good grounds for granting it merely because in his opinion, a better remedy may become available to the applicant at the end of the proceedings.
  4. The Court in exercising its discretion whether to grant [or] refuse an application for stay will consider the special circumstances of the case and unique requirements. The special circumstances in this case were that there was a large amount of rent in dispute and the appellant had an undoubted right of appeal.
  5. The Court in exercising its powers under Order XLI rule 4(2)(b) of the [Civil Procedure Rules](#), can order security upon application by either party or on its own motion. Failure to put security for costs as ordered will cause the order for stay of execution to lapse.”



33. The Primary purpose of stay of execution is to preserve the status quo pending the hearing of the appeal. In *RWW v. EKW* [2019] eKLR, it was observed that:

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the Court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The Court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.”

34. The above are the principles are brought to bear in mind in determining this application. The first consideration is whether the application was filed timeously. The judgment of the trial Court in this matter was delivered on 16/6/2023 and the memorandum of appeal filed with the Court on the 7<sup>th</sup> July 2023. The Application under Certificate of Urgency was filed on the 20<sup>th</sup> July 2023, a cursory look indicates that the Applicant has moved this Court in a timely manner and without any delay.

35. The Applicant contends that he will suffer substantial loss if the orders sought are not granted as the Respondents will execute the Decree and thereby attach his motor vehicle that according to him is the source of his livelihood. The Respondents on the other hand contends that there is no loss to be suffered as non-has been demonstrated.

36. It is the duty of the Applicant in an application for stay of execution to establish that he/she will suffer substantial loss if the orders sought are not granted. In *Machira t/a Machira & Co. Advocates v East African Standard (No 2)* (2002) KLR 63 the Court of appeal considered as to what amounts to substantial loss and held that: –

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the *CPR*. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”

37. The Applicant has not showcased the substantial loss to be occasioned if the stay of execution is not granted. However, this Court notes that, the Judgment in Nakuru CMCC No E263 of 2021 is subsumed in a lead file in CMCC No 287 of 2021 and that the lead file judgment affected CMCC No. 261 of 2021, CMCC No 054 of 2021, CMCC No 262 of 2021 all as consolidated on the 8<sup>th</sup> April 2022. It thus follows that, should this Court not grant the Applicant’s prayers, execution may ensue in all the five (5) cases which cumulatively exposes the Appellant to substantial loss. That is would be in the interest of justice the Court to mitigate the same, pending hearing and determination of the Appeal.

38. The other consideration is security. In the case of *Arun C. Sharma v. Ashana Raikundalia T/A Rairundalia & Co. Advocates* (2014) eKLR the Court held that:

“The purpose of the security needed under Order 42 is to guarantee the due performance of such decree or order as may ultimately be binding on the Applicant. It is not to punish the judgment debtor ... Civil process is quite different because in civil process the judgment



is like a debt hence the Applicants become and are judgment debtors in relation to the respondent. That is why any security given under Order 42 rule 6 of the Civil Procedure Rules acts as security for due performance of such decree or order as may ultimately be binding on the Applicants. I presume the security must be one which can serve that purpose.”

39. The Applicant in this matter has offered security in the nature of a bank guarantee in the event that the appeal fails. The Court notes that the copy annexed to the Applicant’s Supporting Affidavit dated 19<sup>th</sup> July 2023 marked as “WMG-02” is a copy of a bank guarantee dated 18<sup>th</sup> February 2022, referenced as FBL/003000033721 with a validity of twelve months with an option to renew.
40. The security thus offered by the Applicant is unenforceable, is in the name of a non-party to the Appeal, it is expired and no explanation is offered as to whether the same was renewed?
41. The three (3) conditions for granting stay of execution pending appeal must be met simultaneously. They are conjunctive and not disjunctive. It is my finding that the Applicants herein, though they brought this Application without undue delay They have not adequately demonstrated the substantial loss that they would suffer and have failed to furnish security as stipulated by sub-rule 2b, however this Court in dispensing justice is of the considered opinion that The Applicant stands a disadvantage should stay orders be declined before hearing and determination of the Appeal.
42. In the upshot of the above this Court in exercise of its discretion and in the interests of justice, grant the Applicant an Order for stay of execution of judgment/Decree in Nakuru CMCC No 262 of 2021 on the following condition;
  - a. That the Applicant shall Pay to the 1<sup>st</sup> Respondent, 50% Half the Decretal Amount in Judgment/Decree in Nakuru CMCC No 262 of 2021 , within the next thirty (30) days from the date hereof.
  - b. That the Applicant shall deposit, half the decretal amount in a joint interest-earning bank account to be held in the Names of the Counsel for the Applicant and Counsel for the Respondent within the next thirty (30) days from the date hereof.
  - c. The Applicant shall set-down the Appeal for hearing within the next 45 days from the date hereof.
  - d. The Costs of this Application is awarded to the Respondents.
  - e. A default of Order (a) or (b) above by the Applicant, shall automatically lapse the Order of Stay of Execution of Judgment/Decree granted.

It is so ordered.

**SIGNED, DELIVERED VIRTUALLY ON TEAMS PLATFORM ON THIS 9<sup>TH</sup> DAY OF OCTOBER 2023**

**MOHOCHI S.M**

**JUDGE**

