



REPUBLIC OF KENYA



**Odongo v Wanjiku & 2 others (Civil Appeal E147 of 2021)  
[2024] KEHC 12713 (KLR) (Civ) (18 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12713 (KLR)

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

**CIVIL**

**CIVIL APPEAL E147 OF 2021**

**AN ONGERI, J**

**OCTOBER 18, 2024**

**BETWEEN**

**DR PETER OLAKHI ODONGO ..... APPELLANT**

**AND**

**KAMUYU WANJIKU ..... 1<sup>ST</sup> RESPONDENT**

**DR PAUL ODULA ..... 2<sup>ND</sup> RESPONDENT**

**AVENUE NURSING HOSPITAL ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. There are two applications coming for consideration in this ruling.
2. The first is dated 16/2/2024 seeking inter alia, a stay of execution of the decree in Milimani CMCC No. 5695 of 2019 pending the hearing and determination of the appeal the Court of Appeal(COA).
3. The second application is dated 21/2/2024 which is seeking release of the security deposited by the appellant to the respondents.
4. I have considered the affidavits filed in the parties in the two opposing applications together with the rival submissions.
5. The issues for determination in the two applications dated 16/2/2024 and 21/2/2024 are as follows;
  - i. Whether the appellant should be granted stay of release of the deposited security pending the second appeal to the Court of Appeal.
  - ii. Whether the money deposited as security should be released to the respondents.



6. On the issue as to whether the appellant is entitled to stay pending the 2<sup>nd</sup> appeal to the Court of Appeal, Order 42 Rule 6 of the Civil Procedure Rules. Sub-rule 1 gives the court discretionary powers to stay execution and provides as follows:

- “6. 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 sub Rule (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 undue 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.”

7. I find that the Court of Appeal already dismissed a similar application.

8. The appellants/applicants did not disclose this when they approached this court seeking stay pending appeal.

9. On the issue as to whether the funds should be released, I find that the answer is in the affirmative.

10. I find that the respondents are entitled to release of the funds.

11. I allow the application dated 21/2/2024 and I dismiss the one dated 16/2/2024 with costs of both applications to the respondents.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 18<sup>TH</sup> DAY OF OCTOBER, 2024.**

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**A. N. ONGERI**

**JUDGE**

In the presence of:

.....for the Appellant

.....for the 1<sup>st</sup> Respondent

.....for the 2<sup>nd</sup> Respondent

.....for the 3<sup>rd</sup> Respondent

