



**Kesuka v Dishon (Suing on behalf of the Estate of the Late the Late
Rodgers Kazungu Otieno) (Miscellaneous Application E619 of 2024)
[2024] KEHC 14277 (KLR) (Civ) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14277 (KLR)

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

CIVIL

MISCELLANEOUS APPLICATION E619 OF 2024

JN MULWA, J

NOVEMBER 14, 2024

BETWEEN

LEMEYIAN FRANCIS OLE KESUKA APPLICANT

AND

**DAVID OTIENO DISHON (SUING ON BEHALF OF THE ESTATE OF THE
LATE THE LATE RODGERS KAZUNGU OTIENO) RESPONDENT**

RULING

1. I have heard parties in respect of the Motion dated 18/06/2024 wherein the applicant seeks an order of stay of execution of the ruling of the trial court dated 28/03/2024 seeking for setting aside of the judgment delivered on 26/09/2018.

The court notes that essentially, there is no Appeal against the judgment. The decree of the court resulting from the judgment is dated 24/08/2021 for a sum of Kshs 3,224,788/= as at that date. Interest continues to accrue.
2. Whereas the court agrees with the respondent's arguments that there is no order or ruling that is capable of being appealed from it also notes that the judgment is capable of being appealed from looking at the proposed grounds of appeal.
3. The court is minded that at Section 1A, 1B and 3A of the *Civil Procedure Act* and Article 159 2 (d) of the *Constitution* it is mandated to do justice as opposed to technicalities and whereas the parties at the end seemed to agree on stay of execution of the judgment upon terms, the court notes that the applicant has proposed to offer security for the due performance of the decree pending hearing and determination of the Appeal. The respondent too has made his proposals.



4. The court has carefully considered the proposals and nature of the matter that gave rise to the impugned judgment including the length of delay of slightly over 6 years.
5. The court therefore makes the following orders;-

The application dated 18/06/2024 is allowed upon the following conditions:-

1. Leave is granted to the applicant to file appeal out of time. Memorandum of Appeal shall be filed within 7 days and the Record of Appeal within 60 days. Mention for directions on 24/02/2025.
2. On the matter of stay of execution pending hearing and determination of the appeal.
 - a. The Appellant/applicant shall pay to the respondent through his advocates on record 50% of the decretal sum within 30 days.
 - b. The balance of the decretal sum shall be deposited in an interest earning account in joint names of the advocates within 60 days.
 - c. In default of (a) and (b) above, the stay orders shall lapse automatically.
3. Costs of the application to be borne by the applicant

DELIVERED DATED AND SIGNED AT NAIROBI THIS 14TH DAY OF NOVEMBER 2024.

JANET MULWA

JUDGE

