



REPUBLIC OF KENYA



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

**Otieno v Kilimani Hospital (Civil Appeal E092 of 2022)
[2024] KEHC 13622 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13622 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E092 OF 2022
RE ABURILI, J
NOVEMBER 7, 2024**

BETWEEN

LILIAN OTIENO APPELLANT

AND

KILIMANI HOSPITAL RESPONDENT

*(An appeal arising out of the Judgment and Decree of the Honourable
G.C. Serem in the Chief Magistrate's Court at Kisumu delivered
on the 1st September 2022 in Kisumu CMCC No. E517 of 2021)*

RULING

1. From the annexures to the application dated 25th October, 2024 seeking for stay of execution of decree in the lower court and costs assessed in this court, the Appellant/Applicant has already paid the costs assessed in this court on appeal.
2. Accordingly, there is nothing more to be executed as the matter is settled.
3. Concerning the application of execution of decree of the lower court, only the lower court can execute its decree and in addition, as there is no appeal pending, only the lower court can stay execution of the decree that was upheld by this court on appeal.
4. Further, as the execution process by way of proclamation and attachment begun way back on 27th September 2024, this court cannot stay a process which is likely to be completed.
5. Nonetheless the Appellant has the opportunity to approach the lower court to seek reprieve to settle the decree in instalments as sought in the application before this court and that will be in the discretion of the lower court to grant the appropriate orders.
6. Accordingly, as there is nothing else pending before this court, and as the stay sought ought to have been made in the lower court where there is pending an unsettled decree and not before this court,



the application dated 25th October 2024 for stay of execution of decree of the lower court in Kisumu CMCC no E517 of 2021 is hereby declined and dismissed with no orders as to costs and this file is closed.

7. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 7TH DAY OF NOVEMBER, 2024.

R. E. ABURILI

JUDGE

