



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kosgey v Okwara (Civil Appeal E013 of 2024)  
[2024] KEHC 15730 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15730 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E013 OF 2024  
RE ABURILI, J  
DECEMBER 5, 2024**

**BETWEEN**

**SAMMY KIPKPRIR KOSGEY ..... APPELLANT**

**AND**

**PAUL SIMAIGA OKWARA ..... RESPONDENT**

**RULING**

**Introduction**

1. The application before this court is the Notice of Motion dated 14<sup>th</sup> October, 2024 brought under the provisions of Section 1A, 1B, 3A and 95 of the *Civil Procedure Act*, Order 42, Rule 6 and 21 as well as Order 50 Rule 6 and 51 Rule 1 of the *Civil Procedure Rules*, and all other enabling provision of law.
2. The applicant seeks for orders that:
  1. Spent
  2. Spent
  3. That there be stay of execution of execution of decree in Winam SPM CC E182 OF 2022 made on 25<sup>th</sup> January, 2024
  4. that the appeal as dismissed for non-compliance with the directions of the court made on 6/6/2024 be reinstated.
  5. That costs be provided for.
3. The application is supported by the grounds on the face of the said application and the supporting affidavit of Theldred Wesonga Advocate on behalf of the applicant.



4. According to the applicant's counsel, their instructing client had temporarily withdrawn instructions following internal wrangles by shareholders of the insurer company, Direct line Insurance company thereby making it difficult for the advocates to act and follow through the initial instructions in the matter. That this is a matter which is in the public domain as it was aired widely in the media.
5. That the wrangles had since been resolved via court decision in Milimani HC COMM case No. E328 of 2024 vide ruling rendered on 4/10/2024 which ordered for restoration of a server that had been disrupted leading to the advocates losing the electronic diary.
6. The respondent filed a replying affidavit mainly accusing the applicant of inordinate delay in complying with this court's directions which was prejudicial to the respondent who should be left to enjoy the fruits of his judgment.
7. The application was argued orally with the parties' counsel reiterating their respective positions as deposed in the affidavits.
8. The matter had initially been slated for judgment only to discover that the appellant had not filed a record of appeal and submissions.
9. I have considered the application and the response together with oral submissions. I observe that the issues raised by the applicant's counsel are serious and in the public domain that Directline Insurance Company has had some serious internal shareholder disputes leading to interruption of instructions to advocates and settlement of decrees. That dispute is pending in court.
10. According to the applicant's counsel, the decretal sum had already been deposited in an interest earning account hence it is safe. The applicant had however not filed a record of appeal and submissions.
11. I exercise discretion and grant the orders sought. I review and set aside the order of 17/10/2024 dismissing this appeal and substitute it with an order reinstating the appeal for hearing. The record of appeal and submissions if filed are deemed to be duly filed and served. The respondent is granted 30 days of today to file and serve submissions and the applicant to ensure that the decretal amount if not yet deposited in an interest earning account shall be deposited within 30 days of today as a condition for stay of execution of decree in Winam SPM CC E182 of 2023.
12. Costs shall be in the cause.
13. Mention before the Deputy Registrar on 30/1/2025 to confirm compliance and to place the file before the judge for fixing of a judgment date.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 5<sup>TH</sup> DAY OF DECEMBER, 2024**

**R.E. ABURILI**

**JUDGE**

