



**Njenga & another v Ngugi (Civil Appeal E074 of 2023)
[2024] KEHC 15501 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15501 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CIVIL APPEAL E074 OF 2023
MA ODERO, J
DECEMBER 6, 2024**

BETWEEN

DAVID NJENGA 1ST APPELLANT

DAVID OCHIENG 2ND APPELLANT

AND

BETTIROSE NJOKI NGUGI RESPONDENT

RULING

1. Before this Court for determination is the Notice of Motion dated 28th March 2024 by which the Applicants David Njenga and David Ochieng seek the following orders.
 1. Spent
 2. Spent
 3. That this Honourable Court be pleased to issue an order staying the execution of judgment and decree in Karatina PMCC No. 024 of 2022 issued on 17th Day of October 2023 pending the hearing and determination of the instant Appeal.
 4. The costs of this application be provided for.”
2. The Respondent Bettirose Njoki Ngugi opposed the application for stay through the Replying Affidavit dated 15th April 2024 sworn by Mwangi Ben an Advocate of the High Court of Kenya.
3. The matter was canvassed by way of written submissions. The Applicant filed the written submissions which were not dated whilst the Respondent relied upon her written submissions dated 30th September 2024.



Analysis and Determination

- 4. The genesis of this application is the judgement delivered on 17th October 2023, in Karatina PMCC No. E024 of 2022. In that judgement the trial court found in favour of the Respondent against the Applicants and awarded the Respondent the sum of Kshs. 1,204,660 plus costs of the suit and interest.
- 5. Being aggrieved by that decision the Applicants filed the Memorandum of Appeal dated 15th November 2023. The Applicants now seek a stay of execution of the said judgment pending hearing and determination of their appeal.
- 6. I have carefully considered this application, the reply filed thereto as well as the written submissions filed by both parties.
- 7. Order 42 Rule 6 which sets out the principles for stay of execution provides as follows;-
 - (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the court appeal 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 persona aggrieved by an order of stay made by the court from whose decision to appeal is preferred may apply to the appellate court to have such order set aside. 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 unreasonable delay;-
 - and
 - (b) Such security as the court orders for the due performance of such decree or order as my ultimately be binding on him has been given by the applicant.
 - (c)
- 8. Therefore in order to merit the orders being sought the applicants must satisfy the court.
 - (a) That the application for stay was filed without unreasonable delay.
 - (b) That they stand to suffer substantial loss unless the stay order is granted.
 - (c) That security for the performance of the decree or order has been given by the Applicants.
- 9. The court must weigh the right of the Applicants not to have their appeal rendered nugatory against the right of the Respondents to enjoy the fruits of her judgment.
- 10. I direct that a stay be granted subject to the Applicants depositing the entire decretal sum into a joint interest earning account opened in the name of the Advocates for both parties within thirty (30) days.
- 11. In event of failure to comply with the above orders the stay will automatically lapse with no further reference to the Applicants. Costs of the Application to be met by the Applicants.

DATED IN NYERI THIS 6TH DAY OF DECEMBER 2024.

MAUREEN A. ODERO



JUDGE

