

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. E662 OF 2021

ELIUD NJUGUNA MUNGAI.....1ST APPLICANT

JOSEPH KIHU MBURU.....2ND APPLICANT

VERSUS

PATRICK GATITU MUTAHL.....RESPONDENT

RULING

1. The parties herein agreed on 17.11.2021 that stay execution pending appeal be granted but asked the court to determine the matter of security, based on their submissions. They have now filed submissions which this court has considered. While the Applicants offer a bank guarantee, the Respondent proposes that 2/3 of the decretal sum of Sh. 184,643/- be paid upfront to him and the balance be deposited into a joint fixed deposit account.

2. The court has considered the applicable principles as enunciated in **Kenya Shell V Kibiru & Another (1986) KLR 410** and **Nduhiu Gitahi & Another v Anna Wambui Warugongo (1988) 2 KLR 100**, and the decree in the lower court. The decretal sums are modest and in balancing the interests of the parties, the court directs that the conditions for stay of execution pending appeal will be that the Applicants deposits the entire decretal sum into an interest earning account in the joint names of the parties' advocates within 45 days of today's date. Parties are at liberty to apply.

DELIVERED AND SIGNED ELECTRONICALLY ON THIS 14TH DAY OF DECEMBER 2021

C. MEOLI

JUDGE

In the presence of:

Mr Nyabuto for the Applicants

Respondent: N/A

C/A: Carol