



**Njoroge v Barasa (Miscellaneous Application E1109 of 2024)  
[2025] KEHC 13396 (KLR) (Civ) (29 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13396 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
MISCELLANEOUS APPLICATION E1109 OF 2024  
LP KASSAN, J  
SEPTEMBER 29, 2025**

**BETWEEN**

**SAMUEL KIHARA NJOROGE ..... APPLICANT**

**AND**

**MOSES KHISA BARASA ..... RESPONDENT**

**RULING**

1. This is an application for stay pending the determination of a declaratory suit. The brief facts are that the Respondent obtained Judgment against the Applicant in the lower Court and seeks to execute a decree. The Applicant herein filed a declaratory suit seeking that the its insurance be held liable in fulfilling the lower Court Judgment.
2. Notably, in the declaratory suit the Applicant brought in the respondent herein as a party although the respondent was struck out of the declaratory suit. I have read the submissions and objections raised. I need to note the following;

**1. Miscellaneous Application**

3. This is a miscellaneous application but it is hinged on a substantive declaratory suit which is active. On this basis, i decline to strike it out.

**2. The Respondent's Rights**

4. The respondent has a right to enjoy fruits of its judgement but this cannot defray the rights of the Applicant to file a declaratory suit.



### **3. Security**

5. In the declaratory suit, the Respondent has no control as it is not a party and besides no one can predict the future outcome of the case. The Respondent has a valid judgement of the lower Court and to secure its interests, security ought to be deposited.
6. The conclusion of the above is that prayer 4 of the application dated the 5<sup>th</sup> day of December 2024 is allowed on condition that the decretal amount is deposited to an escrow account within 90 days from today. Each party shall bear own costs.
7. Orders Accordingly.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 29TH DAY OF SEPTEMBER, 2025.**

**L. P. KASSAN**

**JUDGE**

In the presence of:

Mwenda for Applicant

Ataka for Respondent

Court Assistant – Carol.

