



**Kangethe v Kiarie (Civil Appeal E006 of 2024)
[2025] KEHC 13839 (KLR) (6 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13839 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARSEN
CIVIL APPEAL E006 OF 2024
JN NJAGI, J
OCTOBER 6, 2025**

BETWEEN

BONIFACE KAMAU KANGETHE APPELLANT

AND

SUSAN WAITHERA KIARIE RESPONDENT

RULING

1. This court on the 2nd October dismissed an application by Trident Insurance Company Limited where they were seeking for this court to stay admission of the Notice to act in person and the resultant Notice of withdrawal of the appeal by the Appellant herein. The court in its ruling found that the appeal in the matter was properly withdrawn and dismissed the application.
2. Upon the dismissal of the application, Mr. Wamalwa appearing for the insurance company orally sought for stay of execution pending the filing of an appeal. Mr. Gachau for the appellant opposed the application for stay of execution on the ground that the court in dismissing the application had not issued any positive orders capable of being stayed. That the orders were in the nature of negative orders that were incapable of being stayed. He asked the court to dismiss the application.
3. Mr. Kilonzo for the Respondent also opposed the application on the ground that there is no appeal before this court upon which the application for stay can be made. That the court by virtue of dismissing the application, has lifted the garnishee nisi orders issued by this court and therefore that execution should be ordered to proceed. Counsel asked the court to make express orders for execution to proceed.
4. I have considered the application and the submissions by the respective counsels for the parties. First is the question whether the orders issued by the court were negative orders incapable of being stayed.



Negative orders were explained by Makhandia, J (as he then was) in the case of Raymond M. Omboga v Austine Pyan Maranga Kisii HCCA No 15 of 2010 as follows:

“The order dismissing the application is in the nature of a negative order and is incapable of execution save, perhaps, for costs and such order is incapable of stay. Where there is no positive order made in favour of the respondent which is capable of execution, there can be no stay of execution of such an order...The applicant seeks to appeal against the order dismissing his application. This is not an order capable of being stayed because there is nothing that the applicant has lost. The refusal simply means that the applicant stays in the situation he was in before coming to court and therefore the issues of substantial loss that he is likely to suffer and or the appeal being rendered nugatory do not arise...”

5. I have considered the submission by Mr. Gachau and find that the court in dismissing the application by the insurance company did not make any positive orders capable of being stayed. The same were negative orders that were incapable of being stayed. The application by Mr. Wamalwa for stay of execution is thereby dismissed.
6. However, the finding by the court that the appeal was properly withdrawn means that the respondent is at liberty to proceed with execution of the decree of the lower court. Counsel for the respondent, Mr. Kilonzo asked the court to make an order to that effect. In view of the fact that the appeal that was before this court was withdrawn and there is thus no appeal pending before this court, I do hereby, for avoidance of any doubt, make the following order:

That the orders issued by this court on the 17th December 2024 and 6th March 2025 staying execution of the matters that were the subject of the appeal herein are hereby lifted and execution may proceed as ordered by the trial court.

It so ordered.

DELIVERED, DATED AND SIGNED AT GARSEN THIS 6TH DAY OF OCTOBER 2025

J. N. NJAGI

JUDGE

In the presence of:

Mr. Wamalwa for Trident Insurance Company

Mr. Gachau for Appellant

Mr. Kilonzo for Respondent

Court Assistant - Jumaa

