



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

CIVIL APPEAL E027 OF 2025

BASHIR ABDI

CHARLES KYALO MAKATO

APPELANTS

VERSUS

MUVO NDIKU

RESPONDENT

RULING

1. What is before me is the application dated 12/5/2025 brought under certificate of urgency seeking stay of execution of the judgment in Kilungu MCCC E262/2024 pending the hearing and determination of the appeal herein.
2. The judgment was delivered on 14/3/2025 where an award of the sum of Kshs. 850,000 was made in favour of the respondent.

3. The appellant/applicant was aggrieved and filed this application under order 42 Rule 6 together with the memorandum of appeal.

The application is not ready opposed as the respondent view is that the appeal is merely against quantum and liability is not contested.

The respondent is of the view that the application can be allowed on condition that the applicant releases $\frac{1}{2}$ the decretal sum to the respondent, the other $\frac{1}{2}$ be deposited in a joint interest earning account.

4. The applicant filed submissions. The respondent chose to rely on their affidavit.

5. I have carefully considered the application, the affidavits and submission filed - does this application have merit?

6. I have noted that among the annexures to the application is a document where the applicant has proposed an amicable out of court settlement at the sum of between Kshs - 500,000. The respondent made a counter proposal of Kshs. 650,000 which was rejected -

7. In the circumstances these are parties who could easily settle this issue - but more relevant - these figures give a pointer to the security to be deposited.
8. Taking into consideration the appellant's right to an appeal, the Respondent's right to enjoy the fruits of his judgment and the failed negotiations which parties are encouraged to re look into, , I allow the application for stay pending appeal on condition;
 - 1) The applicant releases to the respondent the sum of Kshs. 250,000 and deposits the sum of Kshs. 250,000 in court/joint interest earning account in the names of both counsel within 45 days, hereof.
 - 2) In default of (1) above execution to issue.
9. The Record of Appeal be filed and served upon the Respondent within 45 days hereof.
10. A mention date be assigned by the Court assistant before DR for compliance within 45 days hereof.
11. Orders Accordingly

Dated, signed and delivered via CTS on this 7th November 2025

**Mumbua T Matheka
Judge**

CA Chrispol