



**Mbuba v Waweru & another (Miscellaneous Civil Application
E002 of 2025) [2025] KEHC 17791 (KLR) (28 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17791 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
MISCELLANEOUS CIVIL APPLICATION E002 OF 2025
EM MURIITHI, J
NOVEMBER 28, 2025**

BETWEEN

JANE KAGENDI MBUBA APPELLANT

AND

MARGARET WAITHIRA WAWERU 1ST RESPONDENT

PATRICK GATHUMBI WACHIRA 2ND RESPONDENT

RULING

1. The applicant filed a notice of motion dated 5th August, 2025 seeking the following orders:
 1. Spent.
 2. That the Court do review the orders made by this Honourable Court on 24th April 2025 requiring the Applicant to provide a banker's guarantee for the balance of the decretal sum within thirty (30) days and the Applicant to file the Record of Appeal within sixty (60) days.
 3. That upon review, this Honourable Court be pleased to vary the said orders and direct that the Applicant deposit Kshs 2,000,000/= in a joint interest earning account as opposed to the bank guarantee and to extend the time within which the Applicant has to file the Record of Appeal.
 4. That the stay of execution granted on 24th April 2025 be extended pending the hearing and determination of this application and appeal.
 5. That the costs of this application be in the cause.
2. The application is based on the grounds on the face of the application and the supporting affidavit of Ontita Godwiny Onyancha. The applicant's case is that this Honorable Court, on 24th April 2025, granted the Applicant stay of execution and extension of time to file an appeal out of time on conditions that that the Applicant pays the Respondent the sum of Kshs. 1,000,000/= within thirty



- (30) days from the date of the ruling, the Applicant to provide a banker's guarantee for the balance of the decretal sum within thirty (30) days and the Applicant to file the Record of Appeal within sixty (60) days. The Applicant promptly paid the Respondent the sum of Kshs. 1,000,000/= within thirty (30) days from the date of the ruling.
3. Nevertheless, the Applicant initiated negotiations with the Respondent to deposit Kshs 2,000,000/= in a joint interest account as opposed to the bank guarantee in light of the statutory limit. However, the Respondent did not respond in time.
 4. Further, the applicant avers that if the stay of execution lapses, the Respondent will be at liberty to proceed with execution of the judgment in Baricho CMCC No. E119 of 2023, to the detriment of the Applicant. The Appellant has since filed and served the Record of Appeal in Kerugoya HCCA No. E089 of 2025. This shows the commitment by the Applicant to follow the courts directions. If the stay of execution lapses, the Respondent will be at liberty to proceed with execution of the judgment in Baricho CMCC No. E119 of 2023, to the detriment of the Applicant.
 5. The applicant avers that it is in the interest of justice that the orders requiring the Applicant to provide a banker's guarantee for the balance of the decretal sum within thirty (30) days and the Applicant to file the Record of Appeal within sixty (60) days be reviewed to allow the Applicant deposit Kshs 2,000,000/= in a joint interest account as opposed to the bank guarantee and to extend the time within which the Applicant has to file the Record of Appeal.
 6. Lastly, the Applicant prays that the period within which to deposit the deposit Kshs 2,000,000/= in a joint interest account be extended by at least thirty (30) days to enable compliance with the Court's orders as varied.
 7. The respondents deposed to a Replying Affidavit in response stating that the applicant was to have provided a bank guarantee for the balance of the decretal amount by the 24th June, 2025. That the decretal amount which is Principal plus costs is in excess of the Kshs 2,000,000 that the applicant is offering to deposit in court as the Principal amount alone is Kshs. 3,356,200 reduced by the Kshs. 1,000,000 that was paid the balance is Kshs. 2,356,200.
 8. The respondents aver that the applicant was supposed to have procured the Bank guarantee and submit the same to court and to the respondent's advocate by the 24th June, 2025.
 9. Moreover, the applicant did not take any action to ensure they had either complied with the court order on to make any application to vary the same but continued to sit on their 'laurels.' The applicant only made this application on the 5th August, 2025 which is three and a half months after the initial court order was made on 24th April, 2025.
 10. Lastly, the respondents oppose the order sought and pray that they be allowed to proceed with execution in this matter.

Issue

- a. Whether the court order should be varied and direct that the Applicant deposit Kshs 2,000,000/= in a joint interest earning account as opposed to the bank guarantee.
- b. Whether the stay of execution granted on 24th April 2025 be extended pending the hearing and determination of the appeal.



Analysis

Whether the court order should be varied and direct that the Applicant deposit the balance of the decretal sum in a joint interest earning account as opposed to the bank guarantee.

11. Applications for review and variation of court orders fall under Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules, which require an applicant to demonstrate:
 - i. Discovery of new and important matter,
 - ii. An error apparent on the face of the record, or
 - iii. Any other sufficient reason.
12. In *James Maina Mugo v Waweru Peter* [2014] eKLR, the Court stated that variation is permissible if it ensures just and proportionate security for due performance of the decree.
13. The Applicant proposes a joint interest earning account, which courts have frequently accepted as a secure form of deposit.
14. In *Arun C Sharma v Ashana Raikundalia t/a Rairundalia & Co. Advocates* [2014] eKLR, the Court held that joint accounts provide equitable security to both parties.
15. However, the Court must also consider whether Kshs. 2,000,000/= adequately secures the Respondents given that the outstanding decretal sum is Kshs. 2,356,200/=, exclusive of accruing interest and costs. Security must cover the amount that may ultimately fall due if the appeal fails.
16. The Respondents oppose variation of the order on grounds that: The Applicant was required to file a bank guarantee by 24th June 2025 but failed to do so. The decretal amount (principal and costs) exceeds the Kshs. 2,356,200/= then outstanding after payment of Kshs. 1,000,000/=.
17. The Applicant only moved the Court on 5th August 2025, three and a half months after the initial order, without adequate explanation for the delay. There is no justification given for non-compliance, and allowing variation would prejudice the Respondents.
18. The Applicant did not demonstrate with evidence that she made attempts to secure a guarantee within the required timelines, nor did she move the Court promptly. Nonetheless, the interests of justice favour preserving the appeal from being rendered nugatory, especially since the Applicant has already complied partially by depositing Kshs. 1,000,000/= and filing the Record of Appeal.
19. The Court finds it warranted to vary the order to allow the applicant to deposit the remaining decretal sum in a joint interest earning account.

Whether the stay of execution granted on 24th April 2025 be extended pending the hearing and determination of the appeal.

20. The statutory framework is Order 42 Rule 6(2) of the Civil Procedure Rules, which provides that:

“No order for stay of execution shall be made unless—

 - a. the court is satisfied that substantial loss may result to the applicant unless the order is made;
 - b. the application has been made without unreasonable delay; and



- c. such security as the court orders for the due performance of the decree has been given.

Unreasonable delay

21. The Applicant moved the Court on 5th August 2025. Although this was after the original timelines lapsed, the Court notes that:
22. The Applicant had already paid Kshs. 1,000,000/= as directed. She has now filed the Record of Appeal;
23. The delay is explained as arising from attempts to negotiate an alternative mode of security. Thus, the delay is not so inordinate as to defeat the application.

Whether the applicant will suffer substantial loss

24. The Respondents have indicated their intention to proceed with execution if the stay lapses. Execution would expose the Applicant to the imminent risk of attachment and sale of assets. If execution proceeds before the appeal is heard, the appeal may be rendered nugatory.

Security for due performance

25. The Applicant has already paid Kshs.1,000,000/= and has expressed willingness to deposit the balance in a joint interest-earning account.
26. The Court has addressed the adequacy of this security in the preceding issue. For purposes of stay, the Applicant has shown readiness to provide security in a manner that safeguards the Respondents' interests.
27. The applicant has shown good faith in the offer to deposit into joint account balance of the decretal sum. The applicant has shown good faith in the offer to deposit the balance of the decretal sum into an interest earning joint account. The conditions of grant, and therefore, extension of stay of execution pending appeal are satisfied.
28. Orders
29. Accordingly, for the reasons set out above, the Court makes the following orders:
30. The application for review of the order of the Court for provision of a Banker's Guarantee for the balance of the decretal sum is allowed.
31. The Applicant shall deposit the balance of the decretal sum in the sum of Ksh.2,536,200/= into an interest earning joint account in the names of the Counsel for the parties within thirty (30) days.
32. There shall be extended the order for stay of execution pending appeal.
33. For expedited hearing submissions on the appeal shall be filed each party taking thirty (30) days starting with the appellant.
34. Directions as to judgment in the appeal shall be taken on 26/1/2026.
35. Costs in the Appeal.

Order accordingly.

DATED AND DELIVERED THIS 28TH DAY OF NOVEMBER 2025.

EDWARD M. MURIITHI



JUDGE

Appearances:

Mr. Ontita for the Applicant.

Mrs. Waweru for the Respondent

