



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**  
**CIVIL APPEAL NO. E105 OF 2025**

**LAWARENCE MBAE M'NYIRI.....APPELLANT**

**VERSUS**

**CHARITY WAWIRA MWANGI.....1<sup>ST</sup> RESPONDENT**

**PURITY WAMBUI WAKUTHII**

**(suing as the legal representative of the estate of Lawrence Mwangi Nyawira)**

**.....2<sup>ND</sup> RESPONDENT**

*[Appeal from the Judgement of Hon. Martha Opanga in Wang'uru PMCC E050 of 2023  
delivered on 2nd September, 2025]*

**RULING**

[1] The appellant has filed a Notice of Motion dated 18/9/2025 seeking stay of execution of the judgment decree of the trial court in specific terms as follows:

*“1. THAT the service of this Application be dispensed with in the first instance and the same be certified urgent, admitted and heard ex-parte in the first instance;*

*2. THAT there be a stay of execution of the Judgement delivered by Hon. Martha Opanga on 2nd September, 2025 in Wang'uru PMCC E050 of 2023; Charity Nyawira Mwangi & Ano. Larence Mbae M'nyiri, pending the hearing of this Application inter partes;*

*3. THAT there be a stay of execution of the Judgement delivered by Hon. Martha Opanga on 2nd September, 2025 in Wang'uru PMCC E050 of 2023; Charity Nyawira Mwangi Ano. -vs Lawrence Mbae M'nyiri, pending the hearing of this Application;*

**4. THAT there be a Stay of Execution of the Judgement delivered by Hon. Martha Opanga on 2nd September, 2025 in Wang'uru PMCC E050 of 2023; Charity Nyawira Mwangi & Ano. -vs Lawrence Mbae M'nyiri, pending the hearing and determination of the intended Appeal; and**  
**5. THAT the costs of this Application be provided for.**"

[2] The grounds of the application are set out in the application as follows:

"1. THAT on 2nd September, 2025 the Wang'uru Principal Magistrates' Court (Hon. Martha Opanga) delivered Judgement in favour of the Respondents (then the Plaintiffs) as follows:

- Liability at 100% as against the defendant.
- General damages for Pain and Suffering - Ksh. 50,000/=
- Loss of Expectation of Life Ksh. 200,000/=
- Loss of Dependency Ksh. 3,000,000/=
- Loss of consortium Ksh. 100,000/=
- Special damages Ksh. 630,550/=; Costs of the suit and interests thereon awarded to the Plaintiff; and
- 30 days' stay of execution granted to the Defendant.

2. THAT the Applicant is aggrieved with the Hon. Magistrate's judgment on general damages for loss of dependency for the reason that the Plaintiffs did not provide any proof that the deceased was earning, hence the Court ought to have adopted the minimum wage.

3. THAT the Applicant is aggrieved with the Judgement of the Subordinate Court for the reason that contrary to established precedence, the award of general damages for loss of dependency was not proper.

4. THAT the learned trial Magistrate erred in law and in fact in failing to apply proper legal principles regarding award of general damages for loss of dependency, thus arriving at an erroneous decision;

5. THAT upon delivery of the Judgment, the Subordinate Court granted the Applicant a 30- day stay of execution, which lapses on 2nd October, 2025; 6. THAT as such, the Application has been filed with no undue delay.

7. *THAT unless this Honorable Court grants a Stay of Execution of the Judgement of the Subordinate Court, the Respondents shall move and levy execution upon the Applicant thus rendering the appeal nugatory;*

8. *THAT the Applicant stands to suffer substantial, irreparable loss and damage if the Respondents execute the Decree of the Subordinate Court since it will defeat the substance of this Application and the Intended Appeal;*

9. *THAT the Respondents' financial means are unknown, hence the Applicant is apprehensive that were the decretal sum to be paid out, and the intended appeal is ultimately successful, it would be rendered an academic exercise;*

10. *THAT the intended appeal is meritorious with a high probability of success;*

11. *THAT the Applicant is willing to furnish this Honorable Court with reasonable security in the event it is so directed as a condition for grant of the stay of execution orders;*

12. *THAT the Respondents will not suffer any prejudice or any damage that cannot be compensated by way of costs if this application is allowed; and be*

13. *THAT it is in the interest of justice that the application herein is heard and that the orders sought be granted.”*

[3] The applicant filed a supporting Affidavit in the terms similar to the grounds.

[4] The respondents have opposed the application by a replying affidavit setting out their objection as follows:

**“REPLYING AFFIDAVIT**

*I, CHARITY NYAWIRA MWANGI of P.O Box 90 Wang'uru do hereby make oath and state as follows:-*

1. *THAT I am a female adult of sound mind and the 1st Respondent herein hence competent to swear this affidavit.*

2. *THAT I have authority from the 2nd Respondent to swear this affidavit on her behalf.* 3. *THAT the Notice of Motion Application*

*dated 18/9/2025 has been read to me and having understood its contents, I wish to respond thereto as hereunder.*

*4. THAT on 2nd September 2025, the Honorable trial court delivered judgment in my favor and awarded an aggregate sum of Kshs. 3,980,550/=.*

*5. THAT the intended appeal is not merited as the Applicant has not demonstrated the principles that the trial magistrate failed to appreciate in making the contested award.*

*6. THAT the Applicant has also not demonstrated the loss he stands to suffer if stay of execution is not granted.*

***7. THAT the Applicant has failed to demonstrate that he would not be able to recover the decree sum from us in the event the intended appeal is successful.***

*8. THAT further, the Applicant has not offered any security for due performance of the decree of the lower court.*

*9. THAT the Applicant has not satisfied the conditions for grant of a stay of execution pending appeal and is therefore not entitled to the orders sought.*

***10. THAT being the successful litigant, I am entitled to the fruits of my judgment.***

*11. THAT the application dated 18/9/2025 has no merit and the same should be dismissed with costs to the Respondent.*

***12. THAT should this Court be persuaded to allow the Application, it would only be fair and just that the Applicant be directed to pay to the respondent 75% of the decretal sum and the balance be deposited into an interest earning account in a reputable commercial Bank, to be held by both advocates for the parties.”***

[5] The applicant filed written submissions dated 9/10/2025, and the Respondent opted to rely on the replying Affidavit filed, and ruling was reserved.

[6] The Court respectfully notes the decisions, relied on by the Applicant, of the Court (Ogolla, J.) in *Tropical Commodities Suppliers Ltd & Others vs. International Credit Bank Ltd (in liquidation)* [2004] 2 EA 331 that "Substantial loss does not represent any

*particular mathematical formula. Rather, it is a qualitative concept. It refers to any loss, great or small, that is of real worth or value as distinguished from a loss without value or a loss that is merely nominal."* And **CENTURY OIL TRADING COMPANY LTD VS. KENYA SHELL LIMITED**, NAIROBI (Milimani) HCMCA NO. 1561 OF 2007 (Kimaru, J. (as he then was) that *"The court cannot shut its eyes where it appears the possibility is doubtful of the respondent refunding the decretal sum in the event that the applicant is successful in his appeal."*

[7] On Order 42 Rule 6 [of the Civil Procedure Rules] principles for the grant of a stay of execution pending appeal, the Court considers that there has been no delay in filing the application as judgment was delivered on 2/9/2025 and the Memorandum of Appeal and this application were filed slightly after two weeks on 18/9/2025; that the not insignificant amount of almost Ksh.3,980,550/- is substantial loss if it were paid to the respondent without any hope of recovery upon a successful appeal. The applicant has averred that the means of the Respondents are unknown. The appellant is willing to furnish reasonable security as a condition for stay of execution.

[8] From the Memorandum of Appeal it is not possible to say that the appeal is frivolous as one of the grounds of appellate interference with an award is a finding that the decision of the trial court proceeds from a misapprehension of applicable legal principles thereby arriving at an erroneous award. See **Butt v Khan** [1978] KECA 24 (KLR) where the Court of Appeal held:

*"An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge **proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low.**"*

[9] These objections have been raised in the only grounds Nos. 1 and 2 of the Memorandum of Appeal.

[10] The respondent's opposition to the application for grant of the stay of execution is based on right to fruits of judgment but it does not rebut the averment of lack of means to reimburse the appellant in the event of a successful appeal.

[11] The Court finds that in balancing the right of the appellant to appeal without loss of the substratum of the appeal in the nature of the decretal amount against the right of the respondent to the judgment award of damages for the fatal injury of their relation, an order for part payment of the decretal sum and the deposit into an interest earning joint account of the balance is appropriate.

**ORDERS**

[12] Accordingly, for the reasons set out above, the court finds merit in the application for stay of execution dated 18/9/2025 and it is allowed upon terms as follows:

[13] The applicant shall pay to the Respondents through their advocates the sum of Ksh.1,000,000/- approximating 1/3 of the decretal sum and deposit the balance of 2,980,550/= into a joint interest-earning account in the names of the Counsel for the parties within 30 days.

[14] The appellant shall file the Record of Appeal within sixty (60) days.

[15] Directions on the hearing of the Appeal shall be taken on **26/2/2026**.

[16] The costs of the application shall abide the outcome of the Appeal.

*Order accordingly.*

**DATED AND DELIVERED THIS 18<sup>TH</sup> DAY OF DECEMBER 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

**APPEARANCES:**

Ms. Yieke for the Appellant.

Ms. Naliaka for the Respondents.