

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CIVIL APPEAL CASE NO.E040 OF 2024

(Being an Appeal against the entire Judgment of Honourable Clare Odunga delivered on 6th March, 2025 in Kericho CMCC No.263 of 2022)

JOYCE CHEPNGENOAPPELLANT

- V E R S U S -

FREDRICK ONGONO (Suing as Administrator and Personal Representative of Estate of the Late Denis Makoha Ongono).....RESPONDENT

RULING

1. The Appellant herein took out the Motion dated 25th March, 2025 whereof she sought for Stay of Execution of the decree of the Trial Court pending Appeal. The Appellant swore a Supporting Affidavit and a Further Affidavit and filed the same in support of the motion. The Respondents filed grounds of opposition to oppose the motion.
2. It is the submission of the Appellant/Applicant that unless the order for Stay of Execution is granted, she would suffer

irreparable loss and damage since the appeal will be rendered nugatory.

3. The Respondent opposed the application arguing that since the decree has not been extracted, there is no decree in place to warrant the issue of Stay of Execution of the same. The Respondent did not dispute the averment that the Appeal will be rendered nugatory in that if the decretal sum is paid, the Respondents may not be in a position to refund.
4. This Court is convinced by the argument put forward that unless the order for Stay is granted, the decretal sum if paid it may become extremely difficult for the Appellant to get a refund, if the Appeal turns successful.
5. The application is allowed. Consequently, an order for Stay of Execution of the decree of the Trial Court is granted on condition that the Appellant/Applicant deposits half the decretal sum i.e. Kshs.1,823,675/= in Court within 45 days.

6. Costs of the application to abide the outcome of the Appeal.

**Dated, signed and delivered at Kericho this 3rd day
of December, 2025.**

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**J. K. SERGON
JUDGE**

In the Presence of:-

C/Assistant - Rutoh

Koske for the Respondent

No Appearance for the Appellant