



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MAKUENI
HCCA E129 OF 2024

ALBERT MUTUA TIMOTHY

APPLICANT

VERSUS

COSMAS MALITI KATIKU

RESPONDENT

RULING

1. The application before me is the Notice of Motion dated 7/11/2024 seeking *inter alia* - stay of execution of the judgment and decree in Makindu MCCC 46/2017 which was delivered on 31/10/2024 for the sum of Kshs. 1,654,595.
2. The appeal is both on liability and award quantum of damages.
3. The application is opposed through the replying affidavit of Cosmas Maliti Katiku, the respondent mainly on the ground that the appellant/applicant has not satisfied the threshold set by Order 42 Rule 6 (2) of the Civil Procedure Rule. That in the event the court allows

the application - the applicant to deposit the entire decretal sum in a joint interest account of the advocates within 14 days of the order.

I have carefully considered the rival affidavit and submissions. The only issue for determination is whether the application has merit.

I take guidance from Order 42 Rule 6 on what is required to enable an order for stay of examination pending appeal.

I also take guidance from the authorities cited by each party on the expediency of balancing the right of the appellant to an appeal, and the successful litigant to the fruits of his judgment.

I have noted that the applicant is ready to release part of the decretal sum to the respondent as a condition precedent to the stay order.

I also noted that the respondent made that window open for the appellant/applicant.

In the circumstances, I allow the application for stay of execution pending appeal in the following terms.

1. That the sum of Ksh. 500,000 be released to the respondent and Ksh.500,000 be deposited in a

joint interest earning account in the names of both counsel within 45 days with effect from 16th December 2025

2. In default of (1) above the stay will lapse automatically .

3. The Record of Appeal be filed and served within 45 days with effect from 16th December 2025.

4. Mention in 45 days for compliance on the Record of Appeal and directions.

Dated, signed and delivered via CTS on 15th December 2025

**Mumbua T. Matheka
Judge**

CA Chrispol