

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MIGORI
CIVIL APPEAL NO. E151 OF 2025

JANNES KERUBO NYABUTO.....APPELLANT

VERSUS

QUINTER ACHIENG OUMARESPONDENT.

RULING

The Applicant/Appellant herein has brought application dated 10th December 2025 pursuant to section 3,3A, of the Civil Procedure Act CAP. 21 of the Laws of Kenya, Order 42 Rule 6, Order 50 Rule 5, Order 51 Rules 1&3, Order 22 Rule 22 of the Civil Procedure Rules,2010 and all other enabling provisions of the Law seeking:

THAT this Honourable Court be pleased to grant a stay of execution of the judgment/decree in this matter delivered on 18th July, 2025 pending the hearing and determination of this application and appeal.

THAT upon grant of order of stay of execution, this Honourable Court be pleased to order that the Applicant do provide sufficient security in the form of a Joint Interest earning account or bank deposit to secure the Judgment herein of Kshs.322,200/=

THAT costs of this application be in the cause.

The application is based on the following grounds;-

- a. THAT Judgement herein was delivered on 18th July, 2025 in the following terms;
 - i. Liability at - 100%

- ii. General damages Kshs.
300,000/=
- iii. Special damages
Kshs.22,200/=

Total Amount -Kshs. 322 200/=

Iv. Costs and interest of the suit.

- b. That the Applicant is aggrieved by the said judgment on the issue of quantum.
- c. That the Applicant pursuant to leave granted on 2nd September, 2025 has lodged an appeal against the afore-stated judgment, to wit, MIGORI HIGH COURT CIVIL APPEAL NO. E151 OF 2025, which appeal has high chances of success.
- d. That the order of stay of execution has already lapsed.
- e. That the Decree is for a substantial sum of Kshs. 322,200/= which if paid to the Respondent and the Appeal is successful, the Applicant will not be able to recover the same from the Respondent and the appeal will therefore be rendered nugatory.
- f. That the Applicant will suffer substantial loss and damage if orders sought herein are not granted and further that the appeal will be rendered nugatory.
- g. That this application has been filed timeously.
 - a. That the Respondent will not be prejudiced in any way if the orders sought herein are granted.
 - b. That it is in the interest of Justice that the execution of Judgment and/or decree herein be stayed pending the, hearing and determination of the appeal.

- c. That the Respondent is a person of straw and will not be able to refund the decretal sum if they are allowed to execute and the appeal thereafter succeeds.
- d. That the Applicant is ready, willing and able to furnish such reasonable security as this Honourable Court may deem fit and in particular, the Applicant is willing and able to furnish security by providing a bank guarantee as security for the whole decretal sum.
- e. This Application has been done without any unreasonable delay.

The application is further supported by the annexed Supporting Affidavit of Jannes Kerubo Nyabuto sworn on 10th December 2025 reiterating the grounds on the face of the application. The application was served and directions taken on 17th December 2025 for hearing by way of written submissions.

A perusal of the case tracking system indicates that the respondent did not respond to the application and none of the parties filed submissions as directed. The application therefore stands unopposed and the same is allowed on condition that the Applicant furnishes security by deposit of the whole decretal sum in an interest earning account in the joint names of the advocates for the parties on record within 30 days in default of compliance with the condition herein the respondent will be at liberty to execute without recourse to the court.

This matter will be mentioned on 11th May 2026 before the Deputy Registrar for purposes of calling of records of the trial

court and confirming that records of appeal have been filed and served.

DELIVERED, DATED and **SIGNED** at **MIGORI** this **5th** day of **February, 2026.**

A. ONGINJO
JUDGE