



**Kipsang & another v Kipkemoi (Civil Appeal E010 of 2025)  
[2026] KEHC 2406 (KLR) (19 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2406 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CIVIL APPEAL E010 OF 2025  
JK SERGON, J  
FEBRUARY 19, 2026**

**BETWEEN**

**GEOFFREY KIPSANG ..... 1<sup>ST</sup> APPELLANT**

**MYUNG KIMJOA ..... 2<sup>ND</sup> APPELLANT**

**AND**

**WILLIAM KIPKEMOI ..... RESPONDENT**

**RULING**

1. The subject matter of this ruling is the Motion dated 8<sup>th</sup> July, 2025 in which the appellants/Applicants are seeking for an Order for Stay of Execution and or further Execution of the Judgment/Decree of trial Court pending Appeal. The Appellants/Applicants further beseeched this Court to vary the order of the Trial Court directing them to deposit Kshs.8,113,681= as a condition for Stay and instead direct them to deposit a bank guarantee for Kshs.3,000,000/= the statutory limit for the insurer. The Appellants/Applicants filed the Affidavit sworn by Catherine Kendi, the Legal Officer in support of the motion. When served with the Application, the Respondent did not file any response to the motion.
2. I have considered the grounds set out on the face of the motion plus the facts deponed in the Supporting Affidavit. It is not in dispute that the trial Court entered a default Judgment against the Appellants in the sum of Kshs.5,709,823/=. It is also not in dispute that the Appellants filed the instant appeal to challenge the default Judgment before this Court. They also filed an Application before the Trial Court seeking for an order of Stay of Execution of the Judgment/Decree pending Appeal.
3. The Trial Court granted the order for Stay of Execution of the Trial Court’s Decree pending Appeal on condition that the Appellants deposit in Court the decretal sum of Kshs.8,113,681/=. The appellants’ insurers by the doctrine of subrogation filed the instant Application arguing that the Trial Court failed to note that the statutory limit for the insurer is Kshs.3,000,000/=. The Applicants stated that they are



ready to make a deposit a bank guarantee of Kshs.3,000,000/=. The Appellants argued that unless the order for stay is granted, they stand to suffer substantial loss and that the Appeal would be rendered nugatory.

4. It is also clear from the application that the insurer filed Applications for the setting aside the exparte Judgment and the Declaratory Judgment. Both Applications were dismissed thus exposing the Appellants to execution.
5. It is trite law that the Statutory Limit for settling an Insurance Claim is fixed at Kshs.3 Million. The Appellants have filed an Appeal challenging the Trial Court's Judgment. I have already pointed out the Judgment sum is over and above Kshs.3,000,000/=. The Insurer has participated in the suit before the Trial Court and on Appeal on behalf of the Insured who are the Appellants herein by the doctrine of subrogation.
6. The maximum amount the Insurer can settle is Kshs.3 Million. The Trial Court has issued orders directing the Insurer to deposit an amount more than Kshs.3 Million as security as the due performance of the decree. In a case where the decretal amount is more than Kshs.3 Million, the Insurer will settle Kshs.3 Million while the Insured will settle the balance.
7. With respect, I am convinced by the Appellants' assertion that the Trial Court erred when it issued the orders complained of without noting that the statutory limit for such claims is Kshs.3 Million. The Insurer cannot be directed to deposit an amount in excess of the statutory limit. The Appellants should be given time to settle the amount over and above the statutory limit. The Insurer cannot be forced to deposit or settle a claim of more than 3 Million. In essence, the Court cannot order the Insurer to make payments beyond the statutory limit. The Insurer will basically be acting contrary to the Statute.
8. In the circumstance, I am convinced that unless the Order for Stay is granted, the Applicants will suffer substantial loss. However, the appellants should be alive of the fact that in the end, any amount that is over and above the statutory limit of Kshs.3 Million, they have to settle. This Court has been beseeched to vary the orders issued by the Trial Court directing them to deposit the decretal amount so that they would instead deposit a bank guarantee for Kshs.3 Million from a reputable bank.
9. I am persuaded that a bank guarantee from a reputable bank is good security. There is no pre-judice that may occur if the order is granted.
10. In the end, I find the motion dated 8<sup>th</sup> July, 2025 is with merit. It is allowed thus giving rise to issuance of the following Orders:
  - i. An order for Stay of Execution and or further execution of the decree in Kericho CMCC No.E287 of 2022, William Kipkemoi -vs- Geoffrey Kipsang and another is granted pending Appeal.
  - ii. The conditional order for Stay is issued by the Trial Court on 27/6/2025 is varied and substituted with an Order that the Appellants do instead deposit a bank guarantee for Kshs.3 Million from a reputable bank for due performance of the decree in Kericho CMCC No.e.287 of 2022, William Kipkemoi -vs- Geoffrey Kipsang and Myung Kimjoa within 14 days from the date hereof. In default, execution to issue.
  - iii. Costs to abide the outcome of the Appeal.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 19<sup>TH</sup> DAY OF FEBRUARY, 2026**

.....

**J.K. SERGON**



## **JUDGE**

In the presence of:-

C/Assistant - Rutoh

Lang'at for Applicant

Miss Masinde for Respondent

