



REPUBLIC OF KENYA



Kironyo v Kitondo & another (Suing as the Legal Representatives of the Estate of Francis Thuku Muiruri) (Civil Appeal E011 of 2024) [2026] KEHC 2754 (KLR) (19 February 2026) (Judgment)

Neutral citation: [2026] KEHC 2754 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CIVIL APPEAL E011 OF 2024
WA OKWANY, J
FEBRUARY 19, 2026**

BETWEEN

PETER MWICHIGI KIRONYO APPELLANT

AND

JACKLINE KITONDO 1ST RESPONDENT

MOSES MUIRURI KAMAU 2ND RESPONDENT

**SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF FRANCIS
THUKU MUIRURI**

*(Being an appeal from the Ruling delivered by Hon. Y. M. Barasa
(PM) on 22nd February 2024 in Naivasha CMCC No. 681 of 2021)*

JUDGMENT

Background

1. The appellant was the insured owner of motor vehicle KCZ 630J which was comprehensively insured by Sanlam General Insurance Ltd (Sanlam).
2. The said motor vehicle was involved in a fatal road traffic accident after which Sanlam appointed B.O. Akang'o & Co. Advocates to defend the insured in an accident claim that was filed in Naivasha CMCC No. E681 of 2021.
3. The Appellant's claim was that he reasonably expected his insurer and the appointed advocate to update him on the proceedings, ensure witnesses were called, ensure decrees were satisfied in accordance with the policy and generally protect his legal interests.
4. The hearing before the trial court however allegedly proceeded without the insurer informing the Appellant and judgment was entered against him on 30th June 2023 for the sum of Kshs 4,243,275.



5. The insurer paid only Kshs 3,000,000 of the judgment sum, alleging a statutory cap, thereby leaving a balance of Kshs 1,243,275, which it refused to settle.
6. The Appellant filed a declaratory suit being Nairobi MCCC No. E5017 of 2023 – Peter Kironyo vs. Sanlam Ltd & another seeking, inter alia, orders to compel the insurer to pay the balance of the decretal sum.
7. The Appellant then filed an application seeking leave for his new counsel Guandaru Thuita & Co. to come on record and for stay of execution pending the hearing and determination of the declaratory suit.
8. The lower court dismissed the application on 22nd February 2024 thereby prompting the filing of this appeal.

The Appeal

9. The appeal revolves around two core issues, namely; whether the trial magistrate erred in dismissing the prayer for leave for an advocate to come on record and whether the trial magistrate erred in declining stay of execution pending determination of the declaratory suit.
10. The appeal was canvassed by way of written submissions which I have considered.

The Appellant's Position

11. The Appellant's case was that his prayer for leave to allow his advocates M/s Guandaru Thuita & Co. Advocates to come on record was unopposed and that Article 50(2)(g) of *the Constitution* guarantees the right to counsel of one's choice. He added that Order 9 Rule 9 of the Civil Procedure Rules (CPR), requires consent of the client or leave of the court to appoint a new advocate where judgment has been entered. The Appellant argued that his prayer for leave was denied without any justification.
12. On the prayer for stay pending the hearing and determination of the declaratory suit, it was submitted that the trial court wrongly held that stay can only be granted where an appeal has been filed. Reference was made to several authorities including the case of Andrew Linge Mutua vs Geminia Insurance Co. Ltd (2021) eKLR where the court stated: -

“In these circumstances, justice would be done to all parties if there was a stay of proceedings for a short period to enable the Applicant prosecute his case... Accordingly, I hereby grant an order staying execution... pending the determination of this suit.”
13. The appellant also relied on a recent decision in Ndungu vs. Maisitis & another (Civil Case 35 of 2017) [2024] KEHC 13329 (KLR) (Civ), where stay was granted on condition that half the decretal sum be deposited.
14. The appellant argued that the insurer's negligence denied him the chance to defend the primary suit and that compelling him to pay a large sum upfront amounts to an injustice.
15. It was the Appellant's case that he is not standing in the Respondents' way to enjoying the fruits of their judgment but that he was merely seeking time for insurer to meet its obligation.

The Respondents' Submissions

16. The Respondents submitted that the Appellant was properly found liable and that the dispute, in the declaratory suit, is between the Appellant and his insurer, not the Respondents. They added that execution should not await insurer/insured disputes. Reference was made to the case of Andrew



Linge Mutua vs. Geminia Insurance Company Limited & Zipporah Mwende Mutua (Interested Party) (2021) eKLR, where the Court held:

“The primary obligation of settling the decree falls squarely on the Applicant and in the event the Defendant as his insurer fails to satisfy the decree, the Applicant will still be called upon to satisfy the same.”

17. The Respondents noted that since the declaratory suit is one year old and had not been diligently prosecuted, the trial court properly dismissed the stay application. They also argued that the trial court was functus officio once judgment was delivered. They insisted that they are entitled to enjoy fruits of judgment.

Analysis and Determination

Leave to Come on Record

18. The prayer for leave to come on record was unopposed. Order 9 Rule 9 CPR requires leave where counsel seeks to come on record after judgment. I find that the Appellant properly sought leave for his new advocates to come on record.
19. Article 50(2)(g) of *the Constitution* guarantees representation by counsel of choice. I note that the trial magistrate gave no reason for declining an unopposed prayer.
20. My finding is that trial court erred in arbitrarily denying the Appellant leave to appoint an advocate of his choice contrary to the constitutional and statutory principles.

Stay Pending Declaratory Suit

21. The lower court held that stay may only issue pending an appeal. I find that this holding is incorrect as Kenyan courts have repeatedly held that stay may issue pending declaratory suits, especially where the insurer's liability must first be determined. This was affirmed in several cases including *Moses Karanja vs. Xplico Insurance Co. Ltd* (2021) eKLR where the court held that: -

“I wish to point out that although the application was brought under provision of Order 42 Rule 6 of the Civil Procedure Rules, stay of execution is governed under Order 21 of the Civil Procedure Rules, 2010. However, that provision does not specifically provide for stay of execution pending the hearing and determination of a declaratory suit.

In my view, whether or not to grant stay of execution pending the determination of a declaratory suit would be an exercise of this courts inherent jurisdiction. I note that applicants are persons covered under Section 4(1) of the Insurance motor vehicle 3rd Party Risk) Act and the liability of the Defendant in this suit is also preserved against the third parties so that they could as well sue the defendant herein by way of a declaratory suit to recover the respective sums in the decree issued in their favour.”

22. My finding is that the trial magistrate's position that stay can “only be granted when there is an appeal” was a misdirection.
23. On the issue of prejudice and interests of justice, I note that the Appellant has already paid Kshs. 3 Million through his insurer. This means that the issue of whether the Appellant had actually insured his motor vehicle is not in doubt. In the circumstances of this case, I find that forcing/compelling the Appellant to pay Kshs. 1,243,275 immediately, before a determination of whether insurer should bear the risk, may occasion the Appellant grave injustice.



24. I also note that the Respondents have already recovered more than 2/3 of the decretal sum and will therefore not suffer undue prejudice if stay is allowed subject to reasonable security.
25. Courts have repeatedly held that the purpose of stay is to balance the equities and not to punish either party.

Disposition

26. Having regard to the findings and observations that I have made in this judgment, I find that the instant appeal is merited and I therefore allow it in the following terms: -
 - a. The ruling delivered on 22 February 2024 is set aside in its entirety.
 - b. Leave is granted for Guandaru Thuita & Co. Advocates to come on record for the appellant.
 - c. Stay of execution of the judgment in Naivasha CMCC No. E681 of 2021 is hereby granted pending hearing and determination of Nairobi MCCC No. E5017 of 2023.
 - d. The stay is conditional upon: -
 - i. The appellant depositing half of the balance decretal amount (Kshs 621,637.50) into a joint interest-earning account in the names of the parties' advocates within 45 days, OR
 - ii. The appellant furnishing a bank guarantee of the entire outstanding sum within the same period.
 - e. Failure to comply with conditions in i) and ii) above will cause the stay to lapse automatically.
 - f. Costs of the appeal shall abide the outcome of the declaratory suit.

Orders Accordingly.

DATED, SIGNED AND DELIVERED AT NAIVASHA THIS 19TH DAY OF FEBRUARY, 2026.

HON. W. A. OKWANY

JUDGE

19/02/2026

For Appellant Ms Gikongo For Thuita

For Respondent Owuor

Court Assistant Karani

File closed

