



REPUBLIC OF KENYA



KENYA LAW
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**Karanja & another v Ndungu & 4 others (Civil Suit 2 of 2020)
[2026] KEHC 2339 (KLR) (13 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2339 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL SUIT 2 OF 2020
DO CHEPKWONY, J
FEBRUARY 13, 2026**

BETWEEN

MARY NUNGARI KARANJA 1ST PLAINTIFF

**DENIS NDINU NDIRANGU (SUING AS THE LEGAL REPRESENTATIVES OF
THE ESTATE OF ALEX KARANJA NDUNGU (DECEASED)) 2ND PLAINTIFF**

AND

PAUL NDUNGU 1ST DEFENDANT

SIMON WAMWAKI ITUTHU 2ND DEFENDANT

PAUL NGANGA NGUGI 3RD DEFENDANT

JOSEPH KINYANJUI KURIA 4TH DEFENDANT

LILIAN NJOKI MUHORO 5TH DEFENDANT

RULING

1. This Ruling is in respect to the Notice of Motion application dated 24th June, 2025, in which the Applicants are seeking the following orders:-
 - a. Spent.
 - b. Pending the hearing and determination of this application interpartes, this Honourable Court be pleased to attach and restrict/restrict the release of the sum of Kshs. 3,000,000/= to the 2nd, 3rd and 4th Defendants and/or their agents/advocates deposited with the court on 18th October, 2022 pursuant to the court orders dated 22nd August, 2022.
 - c. The sum of Kshs. 3,000,000/= deposited by the 2nd, 3rd and 4th Defendants on 18th October, 2022 be released to the Plaintiffs in partial satisfaction of the judgment of this court issued on 16th June, 2021.



- d. The costs of this application be borne by the Defendants.
2. The Application is based on the grounds as set out on the face of it and the supporting affidavit of Mary Nungari sworn on the instant date. The Applicant holds that judgment in default was entered for the sum of Kshs 28,700,000/= in their favour on 16th June, 2021 and the 2nd, 3rd and 4th Defendants filed two applications seeking to set aside the said Judgment and stay of execution of the same. According to the Applicant, on 22nd August, 2022 through Hon Kasango, J. issued interim conditional orders requiring the 2nd, 3rd and 4th Defendants to deposit a sum of Kshs. 3,000,000/= in court as security for due performance which they did. And on 5th May, 2025, the Court delivered a ruling in which the Defendants' applications were dismissed, which then upheld the validity and enforceability of the Judgment. As a result, the Applicants seek to have the sum of Kshs. 3,000,000/= deposited in court released to them as part of the decretal sum in line with Order 22 Rule 46 of the Civil Procedure Rules.
 3. The 2nd, 3rd and 4th Defendants opposed the application through the Replying Affidavit of Eric Kaburu sworn on 11th September, 2025, wherein they have averred that the application is premature, misconceived and an abuse of the court process. It is their contention that they have already filed Notice of Appeal dated 8th May, 2025 and served it upon the Applicants and are in the process of filing the substantive application for stay of execution in the Court of Appeal, in compliance with the procedural requirements under Rule 5 (2) of the Court of Appeal rules.
 4. The applicants have averred that the release of Kshs. 3,000,000/= deposited in court as security amounts to a premature execution and would render the appeal nugatory. They also argue that the sum was meant purely for compliance of court directions/orders issue to sustain stay of execution order, thus does not constitute to admission of liability so that releasing the same will be prejudicial to them. They further hold that since the appellate process is underway, there is no justification to grant the reliefs and urge the court to either dismiss the application with costs or hold the same in abeyance pending the hearing and determination of the appeal in the Court of Appeal.

Analysis and Determination.

5. Having read the Notice of Motion application, the Supporting Affidavit and the Replying Affidavit the court finds that the main issue for determination is whether the prayers sought therein are meritable to warrant the orders sought.
6. A reading through the record reveals that this case proceeded for hearing by way of formal proof and Judgment was delivered on 16th June, 2021 in favour of the Applicants for the sum of Kshs. 28,700,000/= . The 2nd, 3rd and 4th Defendants filed two applications dated 4th July, 2022 and 18th August, 2022. The court (Hon Kasango J.) granted interim *ex parte* stay of execution of the Decree on condition that the Defendants deposit a sum of Kshs. 3,000,000/= into court as security for due performance to secure the stay of execution orders, which was done.
7. It is the Applicants' argument that since this court already dismissed the application, it should order the release of Kshs. 3,000,000/= to the Applicants as part payment of the decretal sum. The argument of the 2nd, 3rd and 4th Defendants is that the application is premature given that they have filed a Notice of Appeal to the Court of Appeal and are in the process of filing an application for stay of execution there so that it would be prejudicial to release the same at this point.
8. In line with the arguments advanced by the Counsel for the Appellant, from a perusal of the record, the Court finds that order for the deposit of Kshs. 3,000,000/= was issued with a specific purpose, which was for the grant of conditional stay orders in respect of the 2nd, 3rd and 4th Defendants applications, which were dismissed in the Ruling of this court of 5th May, 2025. Consequently, its purpose has



extinguished. The way forward is for the said sums of money to be released to the Applicants' counsel as part settlement of the decretal sum as the successful litigant to this extent, since the purpose for which the same suits no longer serve the purpose for which were deposited. Since the Applicants have approached the Court of Appeal on the same issue, it is only prudent that they await for the orders and directions from the said court on the application filed before the said court. However, for as long as there is no order setting aside the Judgment and or decree issued on 5th May, 2025, the Applicants remain at liberty to execute.

9. Given that the Applicants have a valid Judgment which is yet to be interfered with by the Court of Appeal, the Court finds that they are justified to have the sums released to them in partial settlement of the decretal sum, the same having been deposited as security in due performance of the decree. For these reasons, the Court proceeds to allow the application and the following orders issue:-

- a. The sum of Kshs. 3,000,000/= deposited by the 2nd, 3rd and 4th Defendants on 18th October, 2022 be and is hereby released to the Plaintiffs in partial satisfaction of the Judgment of this court issued on 16th June, 2021.
- b. The costs of this application to be borne by the Defendants.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 13TH DAY OF FEBRUARY , 2026.

D. O. CHEPKWONY

JUDGE

In the presence of:

M/S Wairimu counsel for Plaintiff

No appearance for and by the Defendants

Court Assistant – Martin/Sakina

