

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

HCCA CASE NO. E033 OF 2026

PATRICK KIMANI NGABU1ST

APPELLANT/APPLICANT

KELVIN WARAGA.....2ND

APPELLANT/APPLICANT

VERSUS

ISAAC NJAI MWANGI.....

RESPONDENT

RULING:

1. The matter is for mention for parties to take direction on Notice of Motion application dated 31st March,2026 in which the Appellant is seeking for:
 - a) **Spent.**
 - b) **This Honourable court be pleased to stay execution of the lower court judgment dated 23rd March,2026 and all consequential orders arising therefrom until the appeal filed by the appellant against the Judgment is heard and determined or until further orders of this court.**
 - c) **The costs herein be costs in the cause.**
2. The application is supported by grounds set out on its face and reiterated in the affidavit sworn by KELVIN WARAGA on 31st March, 2026. The application was served upon the

Respondent's counsel with direction that they attend court for hearing of the matter.

3. Counsel for both parties have indeed attended court and it is confirmed that the Respondents counsel were served with the application and directions.
4. Counsel for the Respondents informed court that they had not filed a response and requested that they be granted leave to file and serve their response within fourteen (14) days. It however, went on to state that they would be amenable to conceding to the application on condition that the decretal sum is deposited in a joint account of both advocates or the court as security for the due performance of the decree. The second proposal has not been opposed by the Applicant/Defendant.
5. Having listened to both counsel for the parties herein, I have equally read through the grounds upon which the application is prescribed both on its face and affidavit in support thereof.
6. I find that the Application has been filed without undue delay, the applicant has demonstrated likelihood of suffering irreparable loss and expressed willingness to comply with the condition of depositing the decretal sum as security for due performance of the decree pursuant to the provision under **Order 42 Rule 6 of the Civil Procedure Rules** stay of execution.
7. In view of this, the Notice of Motion application dated 31st March, 2026 is hereby allowed in the following terms:

- a) **THAT there be a stay of execution of the lower court judgment dated 23rd March,2026 and all consequential orders arising therefrom until the appeal herein is heard and determined on condition that the Respondent deposit the entire decretal sum in court as security for the said performance of the decree within thirty (30) days form the date hereof.**
- b) **The draft Memorandum of Appeal dated 27th March,2026 be and is hereby decreed as duly filed and served.**
- c) **The Deputy Registrar to call for and avail the original record of proceedings in Murang'a Sccc No. E008 of 2026, Patrick Karani Ngabu & Anr Vs Isaac Njai Mwangi.**
- d) **Failure to comply with the condition set out under (c) above, the application will be rendered automatically dismissed.**
- e) **Mention on 18th May,2026 for parties to confirm compliance of the above direction and file further direction as being of the appeal.**

8. It is so ordered

Ruling delivered this 16th day of April, 2026.

**HON. D. O. CHEPKWONY
JUDGE**

