Muthigani v Ndekere & another (Civil Appeal E126 of 2019)
[2026] KEHC 5951 (KLR) (30 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5951 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MERU

CIVIL APPEAL E126 OF 2019

HM NYAGA, J

APRIL 30, 2026

BETWEEN

JOBU MUTHIGANI ..... APPELLANT

AND

SHADRACK MACHARIA NDEKERE ..... 1ST RESPONDENT

MBAABU JACOB JULIUS ..... 2ND RESPONDENT

RULING

1. The application before me is a notice of motion dated 28th July,2025 brought under the provisions of sections 1A, 1B and 3A of the *Civil Procedure Act*, Cap 21 of the Laws of Kenya and all other enabling provisions of law. The Applicant herein, JOBU MITHINGANI, seeks for the security of costs of Ksh.300,000/= deposited in court on 24.6.2022 or thereabouts to be released to him through his advocate and for the 1st Respondent to bear the costs of the Application.

2. The Application is premised on grounds inter alia that he lodged an appeal and the same was successful; that he was awarded both costs of the Appeal and for the trial court; that he awarded Ksh.100,000/= to be paid by the 1st respondent; & that his decretal sum was assessed at Ksh.353,000/=.

3. In his supporting affidavit sworn on the even date, the Appellant averred that this honourable court ordered a deposit of security for costs of Ksh.300,000/= and the same was deposited in court on 24.6.2022. He contended that the said security was essentially for him to recover from and urged this court to release the same to him through his advocate so that he can defray part of the decretal sum and costs assessed in his favour.

4. The Respondents did not file any replying affidavit to the present application.

Analysis And Determination

5. This court has considered the application and the affidavit filed in support thereof. The sole issue for determination is whether the Application herein is merited.

6. As per the record, the Appellant lodged an appeal before this Court against the judgment of the subordinate court delivered on 20th September 2019. The appeal was successful and vide a judgment delivered on 20th May 2021, this Court ordered the 1st Respondent to refund Kshs. 100,000/= to the Appellant together with interest thereon at court rates from the date of the judgment of the lower court.

7. Subsequently, the 1st Respondent filed an application on 9th June,2022 seeking stay of execution of this court's judgement pending the hearing and determination of the Appeal. On 10th June 2022, this Court ordered the 1st Respondent to deposit Kshs. 300,000/= in court as a condition precedent for the grant of stay of execution pending appeal.

8. There is no pending Appeal.

9. The Appellant has annexed the warrant of attachment, certificate of costs and decree for the sum of Kshs. 353,000/= and has prayed that the said sum deposited in court be released to him in partial satisfaction of the decretal sum and costs assessed in his favour.

10. Section 3A of the *Civil Procedure Act* states as follows: -

> " Nothing in the Act limits or affects the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court."

11. In Esposito Franco v Amason Kingi Jeffah & two others [2010] eKLR the court affirmed that security for costs in election petitions is intended to guarantee payment of costs to successful parties and may be applied accordingly upon conclusion of proceedings.

12. In light of the above, and noting that the 1st Respondent deposited Kshs. 300,000/= in court as security for costs and that a decree has since been issued in favour of the Appellant in the sum of Kshs. 353,000/=, I find it just and expedient to direct that the said sum be released to the Applicant in partial satisfaction of the decree herein.

13. The Application dated 28th July,2025 is thus merited and I allow it in terms of prayer no.2.

14. There shall be no orders as to costs.

15. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MERU THIS 30TH DAY OF APRIL, 2026.

H. M. NYAGA,

JUDGE.