



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CIVIL APPEAL NO. E093 OF 2022

MATHEW MBITHI MULEEAPPELLANT/APPLICANT

VERSUS

JOYCE NDULU DAUD

PATRICK MUSYOKA KANYASYA

(Suing as Next of Kin to and as the Legal representatives of the Estate of

MUSYOKI DAUDI (Deceased)RESPONDENTS

RULING

1. On 23rd December 2025, this court granted the Appellant/Applicant herein a stay of execution of the decree of this court pending appeal and attached a condition that the Appellant was to deposit the entire decretal sum as security either in court or in an interest earning account within thirty days of the order.
2. The current application which is by way of the Notice of Motion dated 29th January 2026 seeks a variation of the condition for stay of execution, so that the Appellant deposits title deeds of immovable properties in place of the decretal sum. The gravamen of the application is that the Applicant cannot afford the security ordered earlier, and that the Appellant has appealed the judgment and decree of this court and risks suffering substantial loss were the stay order to be

vacated for reason of want of fulfillment of the condition. The Appellant/Applicant annexed documents evidencing ownership of the intended securities and an affidavit of one Elijah Musyoki Nyamu who is the proprietor of the same.

3. In his submissions, learned Counsel for the Appellant/Applicant placed reliance on the following cases:

- **Alexus Khalumba v Harrison Anukutse [2019] KEHC (KLR).**
- **Situma v Nyamai [2025] KEHC 16 998 (KLR).**
- **Margaret Mwhaki Wanjau v Joseph Muiruri Mugo [2015] KEHC (KLR).**

4. I have carefully considered the application, the grounds, the annexures, the submissions and the law. While I agree with the holding of the court in the case of **Margaret Mwhaki Wanjau v Joseph Muiruri Mugo (supra)** that the requirement of security is not meant to occasion hardship or punish a person who has appealed but to secure the rights of the Respondent and that an alternative security, other than deposit of the decretal sum, can be adequate, it is my finding that the Appellant/Applicant does not meet the requirements that would warrant this court to exercise such discretion in his favour. This is because the security offered is not his but a friend's. The said friend is not a party to this case and there is no guarantee that the decree holder/Respondent can legally hold onto the properties in lieu of the decretal sum were the Appellant to lose the appeal in the Court of Appeal. The said friend has no legal obligation to satisfy the decree on behalf of the Appellant. This case is distinguishable from the cases cited by

counsel, because in those cases the landed properties were registered in the name of the person making the application.

5. The upshot is that this application has no merit. The same is dismissed but as the Respondent did not file a response or submissions there shall be no order for costs.

Orders accordingly.

Ruling signed, dated and delivered virtually on this 30th day of April 2026.

**E. N. MAINA
JUDGE**

In the presence of:

Mr. Kivui for Mutuku Advocate for the Appellant/Applicant

Mr. L. M. Wambua for the Respondents

Mary - Court Assistant/Interpreter