



**Kute v Oyieyo (Miscellaneous Application E009 of 2023)
[2026] KEELC 2790 (KLR) (7 May 2026) (Ruling)**

Neutral citation: [2026] KEELC 2790 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
MISCELLANEOUS APPLICATION E009 OF 2023**

E ASATI, J

MAY 7, 2026

BETWEEN

ZADOCK ARCHIBAL OCHIENG KUTE APPLICANT

AND

WILLIAM ODONGO OYIEYO RESPONDENT

RULING

1. The application coming up for determination is the Notice of Motion dated 1st December, 2025 brought by the Applicant in person. The application seeks an order for the release of the deposit of Kshs. 200,000/- to be paid into his bank account, details of which are provided in the application.
2. The grounds of the application, as stated on the face of the Notice of Motion, are that the applicant stands to suffer serious and substantial pecuniary loss should the application be declined. That the Applicant had already cleared the advocate's fees.
3. The application was supported by the contents of the Supporting Affidavit sworn by the Applicant on 1st December, 2025, wherein he deposed to that he had been instructed to deposit Kshs. 200,000 to cover the costs of the intended appeal, which he did. That the order sought is for furthering the overriding objective of the court.
4. The application was opposed vide the contents of the Replying Affidavit of William Odongo Oyieo, sworn on 30th January, 2026.
5. The Respondent's case is that the Applicant had deposited the amount claimed of Kshs. 200,000/- in court as security for the costs of the appeal, which was eventually decided in the Respondent's favour. That, as a consequence of the dismissal of the appeal, the Applicant became liable to pay the Respondent;
 - a. the decretal sum and costs as per the lower court judgement and,



b. costs of the appeal.

That the purpose of the security deposited was to protect the successful party in the event the appeal fails. That the appeal having failed, the security is now rightfully available to offset the successful party's lawful costs.

The Respondent prayed that the application be dismissed and an order be made that the sum of Kshs.200,000/- deposited in court be released to him in partial settlement of the taxed costs and interest.

It was submitted by the Respondent that the application should be struck out as the Applicant has not settled the decretal sum and costs.

6. I have considered the application and the objection thereto. The court record shows that as a condition for allowing the Applicant to file appeal out of time and stay of execution the judgement of the lower court pending appeal, the court ordered the Applicant to deposit in court a sum of Kshs. 200,000/- as security. Receipt dated 2023-12-6 shows that the said amount was deposited in court.
7. The Applicant has not demonstrated to the court what the outcome of the appeal was. It was upon the Applicant to demonstrate that the said amount has now become due and refundable to him.
8. The deposit was made pursuant to the provisions of Order 42 Rule (2)(b), which provides that no order for stay of execution shall be made under subrule (1) unless such security as the court orders for the due performance of such decree or orders as may ultimately be binding on him has been given by the Applicant.
9. The Respondent's case is that the appeal was dismissed with costs, which costs are yet to be taxed, and that the decree in the lower court is still unsettled. This means the applicant is bound by the order to pay the costs of the appeal and to settle the decree of the trial court. This was the purpose of the deposited sum. To release the money to the applicant would be to defeat this purpose.
10. For the foregoing reasons, I find that the Applicant has not demonstrated sufficient grounds for the release of the money to him. The money shall be held as deposited to be paid to the respondent to offset the costs of the appeal once taxed and certified by the court, and the decretal sum.
11. The result is that:
 - i. The application is dismissed.
 - ii. Costs of the application are awarded to the Respondent.

Orders accordingly.

RULING DATED AND SIGNED AT KISUMU, READ THIS 7TH DAY OF MAY, 2026, VIRTUALLY, THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of

Atika.. Court Assistant

No appearance for the Applicant

Respondent present in person.

