

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**

**ELC MISC. APPLICATION NO. E002 OF 2023**

DICK OMONDI OKUKU ..... APPLICANT

VERSUS

WILLIAM ODONGO OYIEYO ..... RESPONDENT

**RULING**

1. The application coming up for determination is the Notice of Motion dated 1<sup>st</sup> December, 2025, which seeks an order that the court be pleased to make an order for the release of the deposit of Kshs. 200,000/- to be paid to the applicant's son by the name of JARED OKUKU OMONDI through 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, and that the application has been made without undue delay.

3. The application was supported by the contents of the Supporting Affidavit purportedly sworn by the Applicant on

1<sup>st</sup> December, 2025, wherein it was deposed to that the applicant 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 6<sup>th</sup> February 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. That

the total amount due and owing from the applicant to him, inclusive of accrued interest, far exceeds the Kshs 200,000 held by the court as security.

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.

The application was heard orally on 6/5/2026 when one Jared Omondi Okuku, who identified himself as the son of the applicant, informed the court that he is the one who filed the application because his father is outside the country for medication. He requested the court to give a date for ruling.

6. I have considered the application and the objection thereto. The court record shows that, as a condition for allowing the Applicant to file an appeal out of time and stay of execution of the judgment of the lower court pending appeal, the court, on 16<sup>th</sup> October 2023, ordered the Applicant to deposit in court a sum of Kshs. 200,000/- as security. Receipt dated 2023-12-13 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 sub-rule (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

in court, to be paid to the Respondent in partial settlement of the costs, interest, 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 7<sup>th</sup> 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.