



REPUBLIC OF KENYA



KENYA LAW
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**Priscilla & another v Ngumbi & 2 others (Civil Appeal E002 of 2025)
[2025] KEHC 1197 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1197 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL APPEAL E002 OF 2025
JK SERGON, J
FEBRUARY 26, 2025**

BETWEEN

MWANGI WANJIKU PRISCILLA 1ST APPELLANT

MICHAEL MBOLE MAINGI 2ND APPELLANT

AND

CALEB MUSEE NGUMBI 1ST RESPONDENT

MICHAEL KAGUME GATURA 2ND RESPONDENT

KENBRIDGE FREIGHT LOGISTICS LTD 3RD RESPONDENT

RULING

1. The application coming up for hearing is a notice of motion dated 20th January, 2025 seeking the following orders;
 - (i) Spent.
 - (ii) Spent.
 - (iii) That this Honorable Court be pleased to stay execution and/or intended execution of the Decree emanating from the Judgment of Hon. F.M Nyakundi, Principal Magistrate, in Kericho CMCC No. E080 OF 2021 delivered on 20th December, 2024 pending the hearing and determination of the Appeal.
 - (iv) That the costs of this application be provided for.
2. The Application is supported by the supporting affidavit of Sally Njoki Mbeche an advocate of the High Court of Kenya practicing as such with the firm of Obura Mbeche & Co Advocates, which is in conduct of this matter on behalf of the Applicants.



3. She avers that the Respondents herein filed a suit in Kericho Chief Magistrates Court Civil Suit No. E080 OF 2021 seeking compensation for injuries sustained due to a traffic accident.
4. She avers that on 20th December, 2024 judgment was entered against the Applicants for a sum of Kshs. Kshs. 5,864,050/=
5. She avers that on 20th December, 2024, the day the judgment was delivered, their office had closed for the Christmas holidays and as such, they were not present to receive or act upon the judgment.
6. She avers that they became aware of the judgment delivered on 16th January 2025, upon return from the holiday break and resumption of normal office operations and that upon becoming aware of the judgment, they acted swiftly and promptly informed the Applicants.
7. She avers that the Applicants being aggrieved and dissatisfied with the said judgment instructed the firm of Obura Mbeche & Company Advocates, on record to appeal against the same and thereby the firm filed a Memorandum of Appeal.
8. She avers that unless the Application for stay pending the appeal is heard urgently and on a priority basis for it will in effect render the Appeal nugatory and the Applicants will suffer irreparable loss and damage.
9. She avers that the 30 days stay of execution granted by the court have almost lapsed and there is a high and probable risk of execution of the said Judgment by the Respondent in the absence of orders for stay.
10. She avers that the Applicants are willing and ready to furnish security for costs for the due performance of the decree as shall be directed by this Honorable Court.
11. She avers that if an order for stay of execution is not granted, the appeal will be rendered nugatory and the Applicants will suffer substantial and irreparable loss. She further avers that there are sufficient grounds for appeal and that the appeal is arguable with high chances of success.
12. Caleb Musee Ngumbi the 1st Respondent filed a replying affidavit and he avers that the application as drawn is misleading, defective, frivolous and an abuse of the court process and therefore ought to be dismissed with costs.
13. He avers that there is no instruction by the appellants in this matter to appeal and therefore the appeal is instigated by an advocate. He further avers that the affidavit is sworn by an advocate, one Sally Njoki Mbeche, who has decided to enter into the arena of litigation.
14. He avers that the 1st Appellant did NOT testify in the lower court and/or make any witness statements hence the appeal cannot be entertained as the same is misleading this honourable court and intends to delay this matter further and deny him the fruits of the judgment.
15. He avers that the judgment in this matter herein was entered in their favour on 20th December, 2024 for Kshs 5,864,050/= together with interests and costs of Kshs. 320,023/= all totaling to Kshs 6,184,428/=
16. He reiterated that the application is brought in bad faith and the applicant wants to delay this matter further and to deny him from enjoying the fruits of the judgment. He avers that the accident occurred in the year 2019 that is 6 years ago and he suffered serious injuries that led to amputation of his left leg.
17. He avers that in the circumstance, the appellants should be ordered to deposit the total amount of Kshs. 6,184,428/= in court and/or joint account interest earning account in the names of both advocates as



security and that Kshs. 3,092,214/= being half the decretal sum should be released to him to enable him to purchase a prosthesis.

18. The matter came up for inter partes hearing and the advocate for the applicants stated that they would be relying on the notice of motion and the averments in the supporting affidavit whereas the advocate for the 1st respondent stated that he would rely on the averments in the relying affidavit.
19. Having considered the pleading by the parties the issue (s) for determination is whether grant a stay of execution of the decree in Kericho CMCC No. E080 OF 2021 delivered on 20th December, 2024 pending the hearing and determination of the Appeal.
20. On the issue as to whether to grant stay, the law governing the granting of orders for stay of execution pending appeal is codified under Order 42 Rule 6 (1) and 2 of the Civil Procedure Rules which stipulates as follows: -“(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is referred may apply to the appellate court to have such order set aside.
 - (2) No order for stay of execution shall be made under subrule (1) unless — (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant. In the instant case, the impugned lower court judgment was delivered on 20.1.2024 and the present application filed on 20.1.2025, I therefore find that the application was filed without unreasonable delay. The Applicant has also filed an appeal which, in his view, raises triable issues. I find that the Applicant has demonstrated that he has sufficient cause for seeking orders of stay of execution pending the appeal. On substantial loss, the Applicant stated that the Respondent will not be able to refund the decretal Kshs. 5,864,050/= plus costs of the suit should the appeal be successful owing to the fact that the Respondent’s financial standing is unknown. On the aspect of security for the due performance of the decree, this court notes that the Appellant offered to provide security for costs for the due performance of the decree as shall be directed by this Court whereas the Respondent is adamant that the instant application is in bad faith and that the Applicant wants to delay this matter further and to deny him from enjoying the fruits of the judgment. He avers that the accident occurred in the year 2019 that is 6 years ago and he suffered serious injuries that led to amputation of his left leg. He therefore proposes that the entire decretal sum and costs of the suit should be deposited in court and/or a joint account interest earning account in the names of both advocates as security and that Kshs. 3,092,214/= being half the decretal sum should be released to him to enable him to purchase a prosthesis.
21. This court in a bid to balance the interests of both parties, allows the notice of motion dated 20th January, 2025 giving rise to issuance of the following orders:-
 - (i) An order for stay of execution of the decree/judgment in Kericho CMCC No. E080 OF 2021 delivered on 20th December, 2024 pending the hearing and determination of the Appeal is granted on condition that: -



- (a) The Appellant shall, within forty-five (45) days from the date of this ruling, deposits the sum of Kshs.6,184,428 in an interest earning account in the joint names of the Advocates appearing in this matter.
- (ii) In default of the order for stay shall automatically lapse.
- (iii) Costs of this application to abide in the outcome of the appeal.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 26TH DAY OF FEBRUARY, 2025.

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J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Omandi for the Respondent

No Appearance for the Applicant

