



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Waweru v Karanja (Civil Appeal E071 of 2024)
[2025] KEHC 2242 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2242 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL APPEAL E071 OF 2024
JK SERGON, J
FEBRUARY 26, 2025**

BETWEEN

JAMES MWANGI WAWERU APPELLANT

AND

FRANCIS KAMAU KARANJA RESPONDENT

RULING

1. The application coming up for hearing is a notice of motion dated 16th January, 2025 seeking the following orders;
 - i. Spent.
 - ii. Spent.
 - iii. Spent.
 - iv. That this Honourable Court be pleased to grant a stay of execution of the judgment/decree in Kericho CMCC number E113 of 2022 delivered on the 3rd day of December 2024, pending the hearing and full determination of this appeal.
 - v. Spent
 - vi. That the Honourable Court be pleased to stay taxation of party and party costs in Kericho CMCC number E113 of 2022 pending the hearing and determination of the appeal.
 - vii. That upon grant of prayer no (iv) above, this Honourable Court be pleased to order that the Applicants do provide sufficient security in the form of a suitable Bank Guarantee from a reputable financial institution to secure the Judgment herein for Kshs. 2,711,840/= pending hearing and determination of this appeal.
 - viii. That costs of this application be in the cause.



2. The Application is supported by the supporting affidavit of James Mwangi Waweru the Appellant/Applicant herein and the insured of motor vehicle registration no. KBH 082U which forms the subject matter of the Application, hence competent to swear the affidavit.
3. He avers that directline insurance instructed the firm of Kimondo Gachoka & Company Advocates to enter appearance and defend him in Kericho CMCC number E113 of 2022, which they did.
4. He avers that judgment in Kericho CMCC number E113 of 2022 was delivered on the 3rd day of December 2024 whereby he was condemned to pay Kshs. 1,355,920/= plus costs and interest.
5. He avers that he was aggrieved by the judgment on liability and quantum and instructed his Advocates on record to file a memorandum of appeal.
6. He avers that the afore-stated appeal, to wit, Kericho High Court Civil Appeal No. E071 Of 2024, has high chances of success and that this application ought to be allowed because; (i) There is no order of stay of execution in force. (ii) The Decree herein is for a substantial sum of Kshs. 2,711,840/= which if paid to the Respondent and the Appeal is successful, he will not be able to recover the same from the Respondent and the appeal will therefore be rendered nugatory. (iii) That he will suffer substantial loss and damage if orders sought herein are not granted and further that the appeal will be rendered nugatory. (iv) That this application has been filed timeously. (v) That the Respondent will not be prejudiced in any way if the orders sought herein are granted. (vi) That it is in the interest of Justice that the execution of Judgment and/or decree in Kericho CMCC number E113 of 2022 is stayed pending the hearing and determination of the appeal and (vii) That the Respondent is a person of straw and will not be able to refund the decretal sum if he is allowed to execute and the appeal thereafter succeeds.
7. He avers that the Respondent will not be prejudiced as the Applicants are ready, willing and able to furnish security by providing a bank guarantee as security for a sum of Kshs. 2,711,840/=
8. He avers that unless this Application is heard and stay granted, the Respondent will proceed to execute against them thus rendering this Application together with the intended appeal nugatory.
9. The Respondent filed grounds of opposition in response to the application on the following grounds;
 - i. That the application at hand is fundamentally flawed and an outright misuse and abuse of the court's judicial process and resources in as far as the Appellant has not tendered any evidence to demonstrate that he is keen on pursuing the instant appeal such as a request for typed and certified copies of the proceedings and a copy of the decree and certificate of costs.
 - ii. That to date the Appellant has failed to serve a memorandum of appeal upon the Respondent herein further demonstrating his indolence.
 - iii. That the Appellant has not demonstrated any threat of execution of the terms of the judgment thus failing to achieve a threshold of the prayers sought.
 - iv. That the Appellant has failed to tender sufficient security for costs as what has been exhibited relates to Directline Assurance Company Limited being an entity that is not a party to these proceedings and further that neither the Respondent nor the court is privy to their contract and/or policy and thus not binding on the Respondent.
 - v. That the application has been made after an inordinate and unexplained delay considering that the judgment before the trial court was delivered on 3rd December, 2025 thereby disentitling the Applicant from the prayers sought.



- vi. That the application is an afterthought and against the interests of justice and is therefore ripe for dismissal and/or striking out.
 - vii. That should this court be inclined to allow the instant application, the same should be strictly conditional upon the decretal sum being deposited in a joint interest earning account held in the names of both counsel and specific timelines given for hearing and determination of the appeal.
18. The matter came up for inter parties hearing and the advocate for the applicant stated that they would be relying on the grounds in the application dated 16th January, 2025, whereas, the advocate for the respondent stated that they would rely on the grounds of opposition.
 19. Having considered the pleading by the parties the issue (s) for determination is whether grant a stay execution and a stay of the assessment of the party to party costs in the proceedings in the trial court.
 20. On the issue as to whether to grant a stay of execution, the judgment was delivered on 3rd December, 2024 while the present application was filed on 16th January, 2025, a couple of weeks after the lapse of the 30 days stay of execution granted by the trial court.

An application for stay invokes the discretionary powers of this court under Order 42 Rule 6 (1) of the Civil Procedure Rules, 2010 that empowers the court to stay execution, either of its judgement or that of a court whose decision is being appealed from, pending appeal. The conditions to be met before stay is granted are provided for under Order 42, Rule 6 (2) which states as follows: “No order for stay of execution shall be made under sub rule (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.” This court notes that although the instant application was not filed timeously, it is not characterized by inordinate delay. On one part, the applicant contended that they would suffer substantial loss and damage if stay is not granted and that the intended appeal will be rendered nugatory and they were willing to offer a bank guarantee of the entire decretal amount as security. On the other part, the respondent contended that a stay of execution is conditional and therefore the applicant should be ordered to deposit the entire decretal sum in a joint interest bearing account in the name of the counsel on record for both parties and that this court should set specific timelines within which the applicant ought to prosecute his appeal. Having considered the submissions by the parties on the issue of stay and the circumstances of this case, it is the finding of this court that the applicant is entitled to a conditional stay of execution as he ventilates his intended appeal.

21. On the issue as to whether to grant a stay of the assessment of party to party costs in the proceedings before the lower court in Kericho CMCC number E113 of 2022 which are due for assessment, it is the view of this court that a stay of the assessment proceedings will be a travesty of justice because costs were awarded by the trial court to the successful party in the suit being the plaintiff/respondent and no appeal, reference or review has been filed against the award of the party to party costs by the applicants herein.
22. Therefore, the notice of motion dated 16th January, 2025 partially succeeds giving rise to issuance of the following orders:-
 - i. Execution of the judgment/decree in Kericho CMCC number E113 of 2022 is hereby stayed pending the hearing and determination of the appeal is stayed on condition that Appellant/Applicant deposits the decretal sum of Kshs.2,711,840/= in an interest earning account in the



joint names of the Advocates appearing in this appeal within 45 days. In default, the order for stay shall automatically lapse.

- ii. Costs shall abide in the outcome of the appeal

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

.....

J.K. SERGON

JUDGE

In the Presence of:-

Miss Injendi for the Respondent

No Appearance for the Appellant

