



Kariuki v Maatu (Suing Administrator and Legal Representative of Mark Leshan Kibyonget – Deceased) (Civil Appeal E005 of 2024) [2025] KEHC 3919 (KLR) (27 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3919 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL APPEAL E005 OF 2024
JR KARANJA, J
MARCH 27, 2025**

BETWEEN

MARTIN GITONGA KARIUKI APPELLANT

AND

MERCY NASERIAN MAATU RESPONDENT

**SUING ADMINISTRATOR AND LEGAL REPRESENTATIVE OF MARK
LESHAN KIBYONGET – DECEASED**

RULING

1. The application vide the notice of motion dated 25th March, 2024 is essentially for stay of execution of the judgement/decreed entered on 20th February, 2024 in Kapsabet CMCC No. E185 of 2022, in which the Applicant, Martin Gitonga Kariuki was the defendant while the Respondent Mercy Naserian Maatu was the plaintiff on behalf of the estate of the late Mark Leshan Kibyonget (deceased).
2. The Applicant seeks to have the execution of judgement stayed pending the hearing and determination of the intended appeal. An ex-parte interim order of stay of execution was earlier granted to the Applicant pending the hearing inter parties of this application, but it appears to have elapsed along the way.
3. Be that as it may, the grounds for the application are set out in the notice of motion and fortified by the Applicants averment contained in the replying affidavit dated 25th March, 2024. The Respondent opposed the Application on the basis of the grounds, contained in her replying affidavit dated 6th March, 2025.
4. After due consideration of the application and the opposition thereto in the light of the rival submissions it became clear to this court that the issue for determination is whether the Applicants has satisfied the condition set out in Order 42 Rule 6 (2) of the Civil Procedure Rules for grant of stay of execution of the impugned judgment.



5. In that regard, the Applicant contends that the application was filed timeously without unreasonable delay and that he is ready to provide security for the sum of Ksh 3 million in the form of a bank guarantee. He opines that the decretal amount being a substantial amount of Ksh 4,241,664/= may not be recovered if it is paid out to the Respondent and the appeal succeeds.
6. The Applicant further contends that the Respondent being a person of straw will not be able to refund the decretal sum if execution takes effect and thereafter the appeal succeeds.
7. Despite the foregoing contentions, the Applicant has not provided any on sufficient evidence to first and foremost establish that the respondent is actually a person of straw and incapable of refunding the decretal amount - if it were paid to her on execution of the judgement.
8. Secondly, the Applicant has not demonstrated how he shall suffer substantial loss if stays is not granted. The mere payment of the decretal amount to the respondent would not amount to substantial loss unless the amounts is inordinately high and it is evidentially demonstrated that the Respondent would be incapable of refunding it.
9. In sum, the Applicant has failed to fully satisfy the conditions prescribed in Order 42 Rule 6 (2) of the Civil Procedure Rules. He is therefore not deserving of this court's favour in exercise of its discretion. The application is therefore dismissed with costs to the respondent.
10. Ordered accordingly.

DATED AND DELIVERED THHIS 27TH DAY OF MARCH, 202

J.R. KARANJAH

JUDGE

In presence of;

Mr. Mbeche for Respondent

Mr. Kayo holding brief for M/s Ogwacho for Appellant/Applicant.

