



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mose v Ratemo (Miscellaneous Civil Case E055 of 2024)  
[2025] KEHC 4571 (KLR) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4571 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
MISCELLANEOUS CIVIL CASE E055 OF 2024  
WA OKWANY, J  
MARCH 27, 2025**

**BETWEEN**

**FRED MOSE ..... APPLICANT**

**AND**

**JOHN OSEKO RATEMO ..... RESPONDENT**

**RULING**

1. This ruling is in respect to the Application dated 31<sup>st</sup> August 2024 wherein the Applicant seeks the following orders: -
  1. Spent
  2. Spent
  3. That the Honourable Court be pleased to grant leave to the Applicant to file an appeal out of time from the judgment and decree in Nyamira CMCC No. 70 of 2015 – *John Oseko Ratemo v Fred Mose*.
  4. That the Honourable Court be pleased to grant a stay of execution of the decree in Nyamira CMCC No. 70 of 2015 – *John Oseko Ratemo v Fred Mose* pending the lodgment, hearing and determination of the intended appeal.
  5. That upon grant of prayer No. 3 above, this Honourable Court be pleased to order that the Applicant do provide sufficient security in the form of a suitable Bank Guarantee from a reputable financial institution to secure the Judgment in Nyamira CMCC No. 70 of 2015 – *John Oseko Ratemo v Fred Mose*.
  6. That the costs of this application be provided for.



2. The Application is supported by the Affidavit of the Applicant's Advocate Ms. Everline Okwoyo and is premised on the grounds that:-
  1. That judgment in Nyamira CMCC No. 70 of 2015 - *John Oseko Ratemo v Fred Mose* was delivered on day of July, 2024.
  2. That in its judgment dated 02/07/24, the Honourable trial court held the applicant 100% liable for causing the and equally the respondent was awarded Kshs. 500,000/= for General Damages and for special damages plus costs of the suit and interest and the applicant's counsel promptly advised their client.
  3. That counsel for the applicant received to appeal against the judgment in Nyamira CMCC No, 70 of 2015- *John Oseko Ratemo v Fred Mose* on the 05th day of August, 2024 way after the 30 days right of appeal had lapsed.
  4. That at this particular time, the instructing client M/S Directline Assurance Company Limited was embroiled in boardroom wrangles with Insurance Regulatory Authority involving the account Signatories which culminated into freezing of the accounts of M/S Directline Assurance Company Limited on 6<sup>th</sup> June, 2024 vide Milimani HCCOMMMISC/E470/2024 - *Ira v Directline Assurance & 7 Others*.
  5. That due to the freezing of the accounts and the suit between M/S Directline Assurance Company Limited and Insurance Regulatory Authority in Milimani HCCOMMMISC/E470/2024, the applicant's insurer could not access funds for filing of application seeking to appeal out of time soon.
  6. That the applicant's insurer has now able to access fund for purposes of filing the said application hence the instant application.
  7. That the intended appeal raises very serious issues of law and fact.
  8. That the appeal intended to be lodged has high chances of success.
  9. That the delay in filing the appeal was not intentional but rather due to the late issuance of instructions to appeal against the court's judgment in Nyamira CMCC No. 70 of 2015- *John Oseko Ratemo v Fred Mose* and equally due to the pending suit between Insurance Regulatory Authority and M/S Directline Assurance Company Limited being Milimani HCCOMMMISC/E470/2024 - *Ira v Directline Assurance & 7 Others*.
  10. That the delay as indicated above is excusable and has been explained.
  11. That the delay occasioned in presenting this appeal is not inordinate.
  12. That the Respondent/Decree Holder herein is a person of straw as such if the Decretal amount is paid to her the intended Appeal will be rendered nugatory as it will be well near impossible to recover the decretal amount from the Respondent/Decree Holder if the intended Appeal succeeds.
  13. That the Applicant is willing to deposit the entire decretal amount being Kshs. 504,500/= as security as the Honourable Court may order for the due performance of the Decree.
  14. That it would be in the interest of justice that the applicant be allowed leave to appeal out of time.



15. That there is no stay of execution in force and the applicant is thus exposed to execution anytime.
3. The Respondent opposed the Application through the Replying Affidavit of his Advocate, Mr. Charles Ogaro Orayo, who avers that the Respondent does not oppose the Application and is willing to concede to it on condition that the Applicant complies with the provisions of Order 42 Rule 6 (2) of the *Civil Procedure Rules*.
4. The Respondent's deponent proposes that the Applicant deposits the entire decretal sum in a joint interest earning account as security for the due performance of the decree as a condition for stay of execution.
5. The Application was canvassed by way of written submission which I have considered. I note that the Respondent does not oppose the application as long as the Applicant deposits the entire decretal sum in a joint interest earning account in the names of Advocates for the parties herein.
6. Order 42 Rule 6 of the *Civil Procedure Rules* stipulates as follows: -

Stay in case of appeal [Order 42, rule 6]

- (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except 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 preferred 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.
- (3) Notwithstanding anything contained in subrule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.
- (4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.
- (5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.
- (6) Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a



temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.

7. In the present case, I do not find it necessary to belabor all the conditions stated under Order 42 Rule 6 for the granting of the orders of stay of execution. I note that the Applicant proposed the deposit of the decretal sum, in court, as security for the due performance of the decree and at the same time annexed a copy of a General Bank Guarantee as the security.
8. Courts have taken the position that, in an application for stay of execution, they must balance the interests of the Applicant, to the right to appeal and the Respondent, to the fruits of the decree.
9. In balancing the parties' interests in this case, I will allow the application dated 31<sup>st</sup> August 2024 on the following terms: -
  - a. That the Applicant shall within 30 days from the date of this order, file the intended appeal and deposit the full decretal sum in a joint interest earning account to be held in the names of the Advocates for the parties herein.
  - b. That in default of compliance with orders in (a) hereinabove, the order of stay of execution shall automatically lapse and the Respondent shall be at liberty to proceed with the execution.
  - c. That the costs of this application shall abide the outcome of the appeal.
10. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NYAMIRA VIA MICROSOFT TEAMS THIS 27<sup>TH</sup> DAY OF MARCH 2025.**

**W. A. OKWANY**

**JUDGE**

