



**Kirui v Crescentia Nafula Mukanda (Suing as the Legal Representative and Administrator of the Estate of the Late Kastrap Andeche - Deceased) & 2 others (Civil Appeal E048 of 2024) [2025] KEHC 3844 (KLR) (25 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3844 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
CIVIL APPEAL E048 OF 2024  
JR KARANJA, J  
MARCH 25, 2025**

**BETWEEN**

**SUSAN CHEPTOO KIRUI ..... APPELLANT**

**AND**

**CRESENTIA NAFULA MUKANDA (SUING AS THE LEGAL REPRESENTATIVE AND ADMINISTRATOR OF THE ESTATE OF THE LATE KASTRAP ANDECHE - DCD) ..... 1<sup>ST</sup> RESPONDENT**

**WELDON KIPNGETICH KIRUI ..... 2<sup>ND</sup> RESPONDENT**

**VICTOR KIMUTAI ROP ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. As per the memorandum of appeal filed herein dated 20<sup>th</sup> September, 2024, the Appellant, Susan Kiptoo Kirui, wishes to appeal against the entire judgment on both liability and quantum passed against her by the Principal Magistrate at Kericho in Kericho CMCC No. E 153 of 2022.
2. In the meantime, the Appellant filed a notice of motion dated 25<sup>th</sup> September, 2024 seeking an order of stay of execution of the judgment pending the hearing and determination of the appeal which is yet to be admitted formally to hearing.

The motion is basically made under Order 42 Rule 6(1) and (2) of the *Civil Procedure Rules*, among other provisions of the *Civil Procedure Act* and Rules.

3. The supporting grounds are in the body of the notice of motion and are fortified by the Appellant's averments in her supporting affidavit dated 25<sup>th</sup> September, 2024.

The record does not show any opposition to the application by way of grounds of opposition and/or a replying affidavit on the part of the respondents.



4. Be that as it may, the Respondents indicated to the court that they filed a replying affidavit virtually. This was only in respect of the first Respondent, Crescentia Nafula Mukanda and not the second and third Respondents both of whom indicated that they were not opposed to the application.
5. The hearing of the application was therefore between the Appellant/Applicant and the first Respondent and this proceeded by way of written submissions filed herein by the Appellant through Omwenga & Co. Advocate's and by the first respondent through Enock Anyona Miruka & Co. Advocates. The first Respondent opposed the application.
6. Order 42 of the Civil Procedure Rules provides for appeal and Rule 6 (1) of the provision provides for stay in case of appeal to the effect that; -

“No appeal or second appeal shall operate as a stay of execution or proceedings under decree or order appealed from except in so far as the court appealed from any order but the court appealed from may for the sufficient cause order stay 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”.

7. The parameters for granting stay are set out in Order 42 Rule (6) (2) of the CPR as follows: -

“No order for stay and 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”
8. In the Applicant's supporting grounds and submissions there is indication by the applicant that she is ready to provide security for the due performance of the decree held by the first Respondent in the form of a bank guarantee.  
  
The security envisaged under the civil procedure rules would be by way of depositing money or property or providing substantial surety to ensure payment of the amount of money awarded by the court. As such, a bank guarantee would be adequate security considering the very hefty amount of over Ksh. 10 Million awarded to the first Respondent vide the impugned judgment.
  9. Indeed, such a large amount would be out of reach of the first Respondent so that if it were to be paid to her the possibility of a refund would be remote if the appeal were to succeed. In the circumstances the Appellant would suffer substantial loss.
  10. However, considering that the first Respondent is entitled to enjoy the fruits of her judgment following the loss of her husband and the bread winner of her family it would be appropriate that a minimal amount of the decretal sum i.e Ksh One Million and five hundred thousand (Ksh. 1.5 million) be paid to the first Respondent by the Appellant.
  11. The present application be and is hereby granted to the extent that there be a stay of execution of the impugned judgment and decree pending the hearing and determination of the appeal on condition



that part of the decretal consent in the sum of Ksh. 1.5 million be paid to the first Respondent within the next twenty-one (21) days from this date hereof and the remaining balance of the decretal amount be secured by a bank guarantee within the afore stated period of time.

12. In default, the stay order shall lapse forthwith and the first Respondent be at liberty to execute.

13. Ordered accordingly.

**DATED AND DELIVERED THIS 25<sup>TH</sup> DAY OF MARCH, 2025.**

**J.R. KARANJAH**

**JUDGE**

