



Karanja v Wachira (Suing as the Legal Representative and Administrator of the Late Manasse Mwaniki Wachira) (Civil Appeal E090 of 2024) [2025] KEHC 5465 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5465 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CIVIL APPEAL E090 OF 2024
EM MURIITHI, J
APRIL 30, 2025**

BETWEEN

DAVID MAIMBA KARANJA APPLICANT

AND

IRENE WAMBUI WACHIRA RESPONDENT

SUING AS THE LEGAL REPRESENTATIVE AND ADMINISTRATOR OF THE LATE MANASSE MWANIKI WACHIRA

RULING

1. The applicant filed a notice of motion dated 19th February, 2025 seeking the following orders:
 1. Spent.
 2. That pending the hearing and determination of the appeal filed herein, there be an order for stay of execution of the judgment and decree issued in Wang’ura CMCC No. E061 of 2022 (Rene Wambui Wachira (Suing as the legal representative and administrator of the late Manasse Mwaniki Wachira V David Maimba Karanja.
 3. That the costs of this Application be provided for.
2. The application is based on the grounds on the face of the application and the supporting affidavit of David Maimba Karanja. The applicants case is that on the 16th of July 2024, judgment was delivered in Wang’uru CMCC No. E061 of 2022 (Rene Wambui Wachira (Suing as the legal representative and administrator of the late Manasse Mwaniki Wachira =vs= David Maimba Karanja where the Respondent was awarded Kshs.3,284,750/= plus costs and interest as damages for the loss to the estate of the deceased brought about an accident that occurred on the 25th of November 2021.



3. Being dissatisfied by the awarded damages of Kshs.3,284,750/= as inordinately high he preferred this appeal so that this court may re-assess the damages and issue an award that is just and founded in law.
4. Nevertheless, the Respondent has already commenced the process of execution despite the pendency of the appeal. The Respondent has filed a declaratory suit as well as instructed Giant Auctioneers in pursuit of execution. In case execution is allowed to proceed to the end, the Applicant stands to suffer substantial loss as the substratum of the appeal will be destroyed. This application as well as the appeal will be rendered nugatory should the Respondent be allowed to execute before they are determined. Lastly, the Applicant's insurer, Trident Insurance Company Limited, is ready and willing to deposit a bank guarantee to act as security for the payment of the decretal sum.
5. The respondent by Replying Affidavit of 21st February, 2025 opposed the application as a non-starter and an afterthought having been brought after an unreasonable and inordinate delay of over 8 months since the trial court delivered its judgment on 16th July, 2024 and which inordinate and inexcusable delay has not been explained by the applicant.
6. He avers that after judgment, his advocate, vide a letter dated 18th July, 2024 sent his tabulation of the judgment sum as well as costs upon the Applicant on 19th July, 2024 but the same was never responded to date which is a clear indication that the applicant is out to frustrate the respondent in realizing the fruits of the trial court's judgment.
7. Further, having persistent in its refusal to settle the decretal sum therein, the Respondent's advocate filed an application dated 30th October, 2024 before this Honourable court to have the lower court file: Wang'uru CC E061 of 2022 returned to Wang'uru civil registry for purposes of extracting the Decree, Certificate of Costs as well as the Warrants of Attachment and sale, which application was allowed as prayed.
8. Moreover, the Applicant has alleged that the applicant's Insurer, Trident Insurance Company Limited is ready and willing to deposit a bank guarantee as security but has failed to annex the said bank guarantee in the application
9. Lastly, that in the alternative if this Honourable Court is inclined to grant stay, then stay be granted on condition that entire decretal sum be deposited in court within 14 day as security for the due performance of the decree it intends to appeal from.

Issue

10. Whether stay of execution pending hearing of the appeal should be granted.

Analysis

11. The issue for determination is whether stay of execution should be granted
Principles for grant of stay of execution pending appeal.
12. The principles guiding the grant of a stay of execution pending appeal are well settled. These principles are provided for under Order 42 rule 6(2) of the Civil Procedure Rules which provides:
 - “2. 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.”

That substantial loss may result to the applicant unless the order is made

13. The appellant’s case is that they are reasonably apprehensive that the Respondent may levy execution against them and the same will render their appeal nugatory and the same will cause them to suffer irreparable loss and damage.
14. The respondent submitted that the Appellants would not suffer loss have not demonstrated to this honourable Court that the Respondent is a man of straw unable to refund the decretal sum if the appeal succeeds.
15. In *Machira T/A Machira &Co Advocates vs East African Standard (No2)* [2002] KLR 63, it was held that:

“To be obsessed with the protection of an appellant or intending appellant in total disregard or flitting mention of the so far successful opposite party is to flirt with one party as crocodile tears are shed for the other, contrary to sound principle for the exercise of a judicial discretion. The ordinary principle is that a successful party is entitled to the fruits of his judgement or of any decision of the court giving him success at any stage. That is trite knowledge and is one of the fundamental procedural values which is acknowledged and normally must be put into effect by the way applications for stay of further proceedings or execution, pending appeal are handled. In the application of that ordinary principle, the court must have its sight firmly fixed on upholding the overriding objective of the rules of procedure for handling civil cases in courts, which is to do justice in accordance with the law and to prevent abuse of the process of the court.”

16. It is clear that the applicant has an arguable appeal and will suffer substantial loss in case stay of execution is not granted.

That the application has been made without unreasonable delay

17. The appellant avers that the application was filed without any undue delay. However, the respondent deposes that the application is an afterthought having been brought after an unreasonable and inordinate delay of over 8 months since the trial court delivered its judgment on 16th July, 2024 and which inordinate and inexcusable delay has not been explained by the applicant.
18. The appellant filed his Notice of Motion application dated 19th February, 2025. It is actually just over seven (7) months since the judgment of 16/7/2024.
19. In *Netplan East Africa Limited v Investment & Mortgages Bank Limited* [2013] eKLR that: -

“The test is whether the delay is prolonged and inexcusable, and, if it is, can justice be done despite the delay. When such delay is established, unless it is well explained, it becomes inexcusable”



20. The delay of seven months in filing the application for stay is not unreasonable, and although no explanation for the delay is given, the Court will excuse it in discretion so as to allow the question as to the excessiveness of damages be heard and determined by the appellate court.

That such security as the court orders for the due performance of such decree or order as may ultimately be binding on the applicant has been given

21. The Applicant's insurer, Trident Insurance Company Limited, is ready and willing to deposit a bank guarantee to act as security for the payment of the decretal sum.
22. The respondent submits that the appellant's offer of a bank guarantee as security is not enough to cover the Respondent. He urges the court to order the applicants to deposit the entire decretal sum in court within 14 days.
23. Michael Ntouthi Mitheu v Abraham Kivondo Musau [2021] eKLR, (Odunga J. as he then was) held as follows:

“The Bank Guarantee given by Diamond Trust Bank and annexed to the supporting affidavit may not specifically cover the Respondent. However, the Court in fashioning the security is not necessarily bound by what is offered by the Applicants.”

24. On security for performance of the decree, the Court in Focin Motorcycle Co. Limited vs. Ann Wambui Wangui & another [2018] eKLR, stated that:-

“Where the applicant proposes to provide security as the Applicant has done, it is a mark of good faith that the application for stay is not just meant to deny the respondent the fruits of judgment. My view is that it is sufficient for the applicant to state that he is ready to provide security or to propose the kind of security but it is the discretion of the Court to determine the security. The Applicant has offered to provide security and has therefore satisfied this ground for stay.”

I should respectfully agree.

25. Considering the concerns of the Respondent in the Appellant's offer for security deposit of a Bank Guarantee, and given the volatile history of the banking industry, of which the Court takes judicial notice as a matter of local notoriety, the Court directs that the decretal sum be deposited into an interest earning account in the joint names of the Counsel for the parties as security in terms of Order 42 Rule 6 (2) (b) of the Civil Procedure Rules.

Orders

26. Accordingly, for the reasons set out above, the Court grants the application for stay of execution pending hearing and determination of the appeal on the following conditions:
1. The Appellant/Applicant shall pay the sum of Ksh.1,000,000/-, approximating one third (1/3) of the Decretal amount of Ksh.3,284,750 plus costs and interest, to the Respondent within thirty (30) days.
 2. The Appellant/Applicant shall deposit the balance of the Decretal sum into an interest-earning joint account in the names of the Counsel for the parties within thirty (30) days.
 3. The Record of Appeal shall be filed within sixty (60) days.



4. In default, the stay of execution order shall lapse and be of no effect.
27. The costs of the application shall abide the outcome of the appeal.
28. Mention on 12/6/2025.

Order accordingly.

DATED AND DELIVERED THIS 30TH DAY OF APRIL 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Maroa for the Appellant.

Mr. Mugane for the Respondent.

