



Muli v Kive (Civil Appeal E207 of 2024) [2025] KEHC 5582 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEHC 5582 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS**

CIVIL APPEAL E207 OF 2024

EN MAINA, J

APRIL 30, 2025

BETWEEN

NICHOLAS MAIKO MULI APPELLANT

AND

DORCAS MBITHE KIVE RESPONDENT

RULING

1. By the Notice of motion dated 8th August 2025 the Appellant/Applicant seeks to have the warrants of attachment issued by the trial court vacated as the same were issued when a conditional stay of execution had been granted and the condition for stay had been fulfilled.
2. The application is vehemently opposed. It is contended that the Appellant/Applicant, did not deposit the decretal sum within the timelines given by this court and hence did not fulfil the condition thereby necessitating execution of the decree.
3. I have considered this application carefully. It is trite that the discretion vested in this court to set aside any order is very wide. However, the discretion must be exercised judicially. It must not be exercised in favour of an indolent party or one who is merely intent on occasioning delay.
4. I have put the above factors into consideration in this case and considering that the Appellant/Applicant has already deposited the security I am inclined to exercise the discretion of this court in his favour more so given that it was not proved to the satisfaction of this court that the time for fulfilling the condition for the stay had elapsed when the deposit was made.
5. In the premises, the application is allowed and the execution process is stayed pending hearing and determination of this appeal.
6. The Auctioneers charges and the costs of the appeal shall however be met by the Appellant/Applicant.
Orders accordingly.



RULING SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 30TH DAY OF APRIL, 2025.

E. N. MAINA

JUDGE

In the presence of :

Ms Masila for Respondent

Mr. Mwanzia for Karanja for the Applicant

Geoffrey – Court Assistant

