



REPUBLIC OF KENYA



KENYA LAW
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**Directline Assurance Company Limited v Ndiba (Civil Appeal
E864 of 2023) [2025] KEHC 12174 (KLR) (Civ) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 12174 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL APPEAL E864 OF 2023**

TW CHERERE, J

MAY 29, 2025

BETWEEN

DIRECTLINE ASSURANCE COMPANY LIMITED APPELLANT

AND

JAMES NDIBA RESPONDENT

RULING

1. By a Notice of Motion dated 29th April 2025 and expressed to be brought under Sections 1A, 1B, and 3A of the [Civil Procedure Act](#) and all other enabling provisions of the law, the Appellant seeks the following orders:
 1. That the sum of KES. 300,000 deposited in court as security for stay of execution, together with all accrued interest, be released to the firm of Bikundo Associates & Company Advocates;
 2. That costs of the application be provided for.
2. The application is supported by the affidavit of Rosalind Waweru, Advocate, sworn on even date, and is premised on the grounds that:
 1. The sum of KES 300,000 was deposited in court as security pursuant to a conditional stay of execution order;
 2. The appeal has since been withdrawn, and no further proceedings are anticipated.
3. Though served with the application on 12th May 2025, the Respondent neither filed any response nor attended the hearing. Accordingly, the application remains unopposed.



4. I have considered the application, the supporting affidavit, and the court record. It is evident that the sum in question was deposited as security pursuant to an order of this Court issued on 02nd September 2023 pending the determination of the appeal.
5. In the persuasive decision of *Arun C. Sharma v Ashana Raikundalia t/a A. Raikundalia & Co. Advocates & 2 Others* [2014] eKLR, the court stated as follows:

“The purpose of the security needed under Order 42 is to guarantee the due performance of such decree or order as may ultimately be binding on the applicant.
6. The appeal has since been withdrawn, and since the purpose for which security was deposited in court no longer exists, there subsists no legal impediment to the release of the funds to Appellant.
7. In the result, the Notice of Motion dated 29th April 2025 is allowed and it is hereby ordered that:
 1. The sum of KES. 300,000 deposited in court as security be released forthwith the advocates on record for the Appellant, Messrs. Bikundo Associates & Company Advocates,
 2. There shall be no order as to costs

DELIVERED AT NAIROBI THIS 29TH DAY OF MAY 2025

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Ruth

For Appellant - Ms. Waweru for Bikundo Associates & Company Advocates,

For Respondent - Mr. Magero for Kimondo Gachoka & Co. Advocates

