



**Gitonga & another v Ndungu & another (Suing as the Legal
Representatives of the Estate of Duncan Irungu Njoroge) (Civil Appeal
E131 of 2023) [2025] KEHC 11547 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11547 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E131 OF 2023
DO CHEPKWONY, J
JULY 31, 2025**

BETWEEN

NGANGA GITONGA 1ST APPELLANT

SIMBA COACH LIMITED T/A SIMBA POA LIMITED 2ND APPELLANT

AND

**SUSAN WAIRIMU NDUNGU & ROSEMARY WANJIKI NYAMBURA (SUING
AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF DUNCAN IRUNGU
NJOROGE) RESPONDENT**

*(Being an Appeal from a Judgment delivered on 17th March, 2023 at the Chief
Magistrate's Court at Kikuyu by Hon. L. Nyabando, Resident Magistrate)*

RULING

1. From the record, on 14th March, 2024 the court delivered a Ruling which set aside a Notice to Show Cause why the Appeal should not be dismissed for want of prosecution. In the same Ruling, the court directed the parties to file submissions in respect of the Appeal. The parties then went silent on the matter until 15th July, 2024 and 23rd September, 2024 when the matter was mentioned before the Deputy Registrar but on both occasions, the parties were absent. On 6th November, 2024, in the presence of both parties, the Deputy Registrar gave directions for the filing of submissions but on 9th December, 2024 and 19th May, 2025, when the matter came up for mention for parties to confirm the Appellant was yet to comply with the directions.
2. On 10th June, 2025, the Appellant's Counsel informed the court that it had already complied with the directions and sought directions of the court on a ruling date. It is important to note that Record of Appeal is yet to be filed in the appeal which appeal has been pending for a considerable period of time and there is need for the same to be determined.



3. Be that as it may, this court issued directions for Ruling on Notice of Motion application dated 2nd May, 2023 which seeks stay of execution orders in respect to the Judgment delivered on 17th March, 2023. It is supported by the Affidavit of Abdalla Hufo sworn on the instant date. The Applicant has urged the court to grant the orders sought therein that he is willing to furnish security in form of a bank guarantee and that he stands to suffer prejudice and substantial loss.
4. The Respondents opposed the application through Grounds of Opposition dated 5th May, 2023, wherein they have argued that the Applicant ought to deposit the full decretal sum in court or in an joint interest-earning account in the names of counsel for the parties since the bank proposed bank guarantee is not proof of deposit of the decretal sum.
5. Upon perusing the record, the court notes that the Appellant filed submissions dated 8th November, 2024 in respect of the Appeal yet no record of appeal has been filed and the pending issue is the determination of the Notice of Motion application dated 2nd May, 2023. For that reason the said submissions shall be disregarded for purposes of this Ruling.
6. Having pointed out that this appeal has been pending a considerable period of time, it would be in the interest of justice to expedite the hearing and determination of the appeal. In view of this, the Notice of Motion application dated 2nd May, 2023 is hereby allowed on the following conditions:-
 - a. The Appellants to deposit the full decretal sum in court within thirty (30)days from the date of this ruling.
 - b. The Appellant is granted leave to file and serve a Record of Appeal within thirty (30) days from the date of this ruling.
 - c. In default of the above directions, the Appeal shall automatically stand dismissed for want of prosecution.
 - d. Mention on 1st September, 2025 before the Deputy Registrar for parties to confirm compliance and take further directions.

It is hereby ordered.

RULING DATED AND SIGNED AT KIAMBU THIS 27TH DAY OF JULY, 2025.

D. O. CHEPKWONY

JUDGE

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 31ST DAY OF JULY 2025.

FRANCIS RAYOLA OLEL

JUDGE

