



REPUBLIC OF KENYA



**Nganga v Opeto alias Kofi (Civil Appeal E009 of 2024)  
[2024] KEHC 2925 (KLR) (22 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2925 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CIVIL APPEAL E009 OF 2024  
WM MUSYOKA, J  
MARCH 22, 2024**

**BETWEEN**

**RICHARD EYANI NGANGA ..... APPELLANT**

**AND**

**FIDELIS OPETO ALIAS KOFI ..... RESPONDENT**

*(An appeal arising from the ruling of orders of Hon. A. Ogange, Adjudicator,  
delivered on 6th March 2024, in Malaba SCC COMM E010 of 2024)*

**RULING**

1. The Motion, dated 7<sup>th</sup> March 2024, is for stay of execution and stay of proceedings. It is not indicated what the applicant seeks to do upon the stay being granted, that is whether to pursue an appeal or to make some application, or whatever objective. A stay order cannot be granted for the sake of it. It must be for meeting some objective. See Order 22 rule 22 and Order 42 rule 6 of the [Civil Procedure Rules](#).
2. I note that a memorandum of appeal was filed herein, dated 6<sup>th</sup> March 2024. However, the Motion, dated 7<sup>th</sup> March 2024, does not appear to have anything to do with the appeal. The stay sought, of execution and proceedings, appears to have nothing to do with the appeal. The stay is not sought pending appeal, or pending the doing of anything. Indeed, there is no mention of the word “appeal” in the Motion. I have perused, very closely, the supporting affidavit, it makes no mention of stay pending appeal.
3. I am not persuaded that the orders sought in the Motion of 7<sup>th</sup> March 2024 are for granting, for the reasons given. However, for the purpose of serving substantive justice, I shall grant the stay sought, as an appeal has been filed, on condition that the appellant shall deposit the total decretal sum, in this court, within 14 days, in default of which the stay orders herein shall lapse.
4. Given the procedural regime under which the suit at the trial court was filed, which provides for very strict timelines, the hearing of the appeal herein shall be expedited. The Deputy Registrar shall call for



the trial court records forthwith. The appeal herein is hereby admitted. The appellant shall file a record of appeal, together with his written submissions, within 14 days. The respondent shall have 14 days to file his rejoinder. I shall allocate a date for compliance, at the delivery of this ruling. It is so ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 22<sup>ND</sup> DAY OF MARCH 2024**

**WM MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Wasilwa, instructed by Wasilwa Makhakara & Company, Advocates for the Appellant.

Mr. Ouma, instructed by BM Ouma & Company, Advocates for the Respondent.

