



REPUBLIC OF KENYA



Gitau v Makau (Civil Appeal E029 of 2024) [2024] KEHC 10318 (KLR) (30 July 2024) (Ruling)

Neutral citation: [2024] KEHC 10318 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E029 OF 2024**

GMA DULU, J

JULY 30, 2024

BETWEEN

BENARD MUCHENE GITAU APPLICANT

AND

GRACE MUMO MAKAU RESPONDENT

RULING

1. Before me is an application dated 3rd April 2024 brought by the applicant by way of Notice of Motion under Section 3, 3A of the *Civil Procedure Act* (Cap.21), and Order 42 Rule 6, Order 50 Rule 5, and Order 51 Rules 1 & 3 and Order 22 Rule 22 of the Civil Procedure Rules.
2. The application, which was filed through counsel M/s Kimondo Gachoka & Company Advocates, seeks the following orders:-
 1. (Spent).
 2. (Spent).
 3. That the court be pleased to grant a stay of execution of the judgment/decree in Taveta Civil Case No. E004 of 2022 delivered on 22nd February 2024 pending the hearing and full determination of the appeal in Voi HCCA No. E029 of 2024.
 4. That upon grant of prayer 3 above, the court be please to order that the applicant does provide sufficient security in the form of a suitable Bank Guarantee to secure the judgment herein of Kshs. 242,000/=
 5. That costs of the application be in the cause.
3. The application has grounds on the face of the Notice of Motion that judgment had been delivered on 22nd February 2024 in Taveta Civil Case No. E004 of 2022 and an appeal had already been filed; that



- the appeal is against a substantial amount; that if the stay orders sought are not granted the appeal may be rendered nugatory as the respondent might not be able to repay the decretal amount.
4. The application was filed with a supporting affidavit sworn by Benard Muchene Gitau the applicant amplifying the grounds of the application.
 5. The application has been opposed through a replying affidavit sworn by Grace Mumo Makau the respondent on 11th April 2024, deponing that half of the decretal amount be released to the respondent within 45 days.
 6. The application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Kimondo Gachoka & Company Advocates for the applicant, as well as the submissions filed by Njoroge Mwangi & Company Advocates for the respondent.
 7. This being an application for stay of execution of judgment or decree pending determination of appeal, it is governed by the provisions of Order 42 Rule 6 of the *Civil Procedure Rules*.
 8. In my view, this application was filed without unreasonable delay as it was filed on 3rd April 2024, while the judgment was delivered on 22nd February 2024, a period of slightly more than a month.
 9. As to whether the applicant is likely to suffer substantial loss if the stay of execution orders sought are not granted, in my view, if the entire decretal amount is paid out to the respondent, the applicant might suffer substantial loss because the respondent might not be in a position to repay the amount. In my view, payment of part of the decretal amount to the respondent presently, will be fair to all parties involved, as the appeal is on quantum of damages only.
 10. As for the requirement for provision of security, the applicant has offered to provide a bank guarantee. In my view however, payment to the respondent of part of the decretal amount will be sufficient security provided by the applicant.
 11. Consequently, I allow the application and order as follows:-
 - i. This court grants stay of execution of judgment/decree in Taveta Civil Suit No. E004 of 2022 delivered on 22nd February 2024 pending hearing and full determination of Voi HCCA No. E029 of 2024.
 - ii. The above stay of execution orders are subject to the condition that the applicant pays the respondent part of the decretal amount Kshs. 100,000/= through counsel within 45 days from today.
 - iii. In default of (ii) above, the stay orders above granted will automatically lapse and be of no effect.
 - iv. The costs of this application will abide the determination of the appeal.

DATED, SIGNED AND DELIVERED THIS 30TH DAY OF JULY 2024 IN OPEN COURT AT VOI VIRTUALLY.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

Mr. Njiru for applicant



Mr. Kazungu for respondent

