



**Britam General Insurance Company Limited v Kyala (Suing as the Legal Representative of the Estate of Kilaku Kyalya (Deceased)) (Civil Appeal E689 of 2023) [2024] KEHC 13199 (KLR) (Civ) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13199 (KLR)

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

**CIVIL**

**CIVIL APPEAL E689 OF 2023**

**JN MULWA, J**

**OCTOBER 31, 2024**

**BETWEEN**

**BRITAM GENERAL INSURANCE COMPANY LIMITED ..... APPELLANT**

**AND**

**SAMMY KYALA ..... RESPONDENT**

**SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF KILAKU KYALYA (DECEASED)**

**RULING**

1. Before court is a Notice of Motion dated 26<sup>th</sup> July 2023 filed under Certificate of Urgency pursuant to the provisions of Order 42 Rule 6 and Order 51 Rules 1 and 4 of the Civil Procedure Rules and Section 1A, 1B, 3, 3A and 63(e) of the [Civil Procedure Act](#). The Appellant seeks an interim stay of execution of the Judgment of Hon. Mr. R. L Musiega delivered on the 21<sup>st</sup> day of July 2023 in Nairobi Milimani Chief Magistrate’s Court Civil Suit No. E4855 of 2022 pending hearing and final determination of the Appeal.
2. The application is predicated on the grounds set out on its face and supported by the Affidavit of Ms. Hope Wambugu, a Manager- Legal Claims at Britam General Insurance Company Limited, the Defendant herein.
3. The Respondent responded through an Affidavit sworn on 18<sup>th</sup> October, 2023.
4. The court has considered the parties respective affidavits in support of and in opposition of the application. The only issue is whether the Applicant has satisfied the conditions for the grant of stay of execution pending appeal.



5. The conditions necessary for the grant of stay of execution pending appeal are laid out in Order 42 Rule 6(2) of the Civil Procedure Rules as follows:

“ 6.

(2) No order for stay of execution shall be made under sub-rule (1) unless:

- a. the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
- b. Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

6. In the instant case, the Appellant/Applicant in its submissions is agreeable to furnish security by depositing the decretal sum in court or in a joint Bank Account. The Respondent on the other hand in his affidavit stated that he is a businessman in Mwingi having various properties and assets and therefore capable of repaying the decretal sum if deposited in his Bank Account.

7. In the case of Global Tours & Travels Limited; Nairobi HC Winding Up Cause No 43 of 2000, Ringera J (as he then was) stated thus;

“ As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice...the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order and in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.”

8. For the foregoing and taking guidance from precedent, the Court finds that the Appellants application dated 26<sup>th</sup> July, 2023 is merited and is allowed in the following terms:

- a. The Appellant/Applicant shall deposit the sum of Kshs. 1,041,033.00/= in a joint interest earning account in the names of the parties Advocates within thirty (30) days from the date of this Ruling.
- b. In default of (a) above, the stay granted shall automatically lapse.
- c. The costs of the application shall abide by the outcome of the appeal.

Orders accordingly.

**DATED, DELIVERED AND SIGNED IN NAIROBI THIS 31<sup>ST</sup> DAY OF OCTOBER, 2024.**

**JANET MULWA**



**JUDGE**

