



**Hirani & another (Suing as the Legal Representative, Administrator of the Estate of Ramji Govind Hirani) v Jubilee Insurance Company Ltd & another (Commercial Case 761 of 1999) [2024] KEHC 15238 (KLR) (Commercial and Tax) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15238 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE 761 OF 1999  
NW SIFUNA, J  
NOVEMBER 28, 2024**

**BETWEEN**

**KISHOR RAMJI HIRANI ..... 1<sup>ST</sup> PLAINTIFF**

**PRIYASH HIRANI ..... 2<sup>ND</sup> PLAINTIFF**

**SUING AS THE LEGAL REPRESENTATIVE, ADMINISTRATOR OF THE  
ESTATE OF RAMJI GOVIND HIRANI**

**AND**

**JUBILEE INSURANCE COMPANY LTD ..... 1<sup>ST</sup> DEFENDANT**

**FOREFRONT AGENCIES ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling is on the Judgment Debtor’s motion dated 3<sup>rd</sup> March 2023 and which was brought pursuant to Order 42 Rule 6 of the Civil Procedure Rules. The same which is supported by the Supporting Affidavit of JANET KIUNGA sworn on 6<sup>th</sup> March 2023 and is based on the grounds in it, seeks a stay pending the hearing and determination of an Appeal that the Judgment-Debtor intends to file in the Court of Appeal against the judgment delivered in this suit by Okwanyi J on 21<sup>st</sup> December 2022.
2. The Judgment-Debtor’s said intent to Appeal the decision is as per its Notice of Appeal dated 9<sup>th</sup> January 2023 (which is almost two years ago) and is in terms of draft Memorandum of Appeal annexed to this Application’s said Supporting Affidavit as annexure “JK 4”. The Notice of Appeal was also annexed and marked as annexure “JK3”.



3. The Application was opposed by the Decree-Holder, and was later heard orally, with each party orally arguing its position.

### **Analysis & Determination**

4. I have carefully distilled the Application together with its said Supporting Affidavit as well as the opposition filed against it; and the oral submissions by both parties. I have also considered the applicable law and in particular Order 42 Rule 6 of the Civil Procedure Rules, under which it was brought.
5. The said legal provision outlines three conditions that an Application for stay pending Appeal should meet, namely:
  - a. The Applicant must demonstrate that it is likely to suffer substantial loss should the stay not be granted;
  - b. The Application ought to have been made without unreasonable delay; and
  - c. The Application ought to have offered security for the due performance of the decree.
6. Upon carefully appraising the Application, I respectfully find that it has not demonstrated that substantial loss shall be suffered or even the loss that the Applicant shall suffer should execution proceed.
7. The Application was also made after undue delay of almost three months. Which delay is, in my view, unexplained and unreasonable delay; hence inexcusable. Besides, from the date of lodging of the Notice of Appeal and which date was 9<sup>th</sup> January 2023, the Appeal to the Court of Appeal ought to have been filed within 60 days from the date of that Notice.
8. The 60 days within which the Judgment-Debtor was to file the Appeal lapsed on 9<sup>th</sup> May 2023; which is more than twenty months ago. Yet todate no Appeal has been filed. As such there is no appeal to talk about and an Appeal cannot be intended for almost two years, or forever. The intent ought to have been actualized by filing the Appeal. Which has not been done.
9. As to the condition of offer of security for the due performance of the decree, I find that the Application has offered none at all. The offer cannot be speculated or merely hinted. In my view, that offer has to be specifically made in the Application and cannot be merely inferred or merely intimated in sentiments from the bar as is the case in this Application.
10. The upshot of all this is that this Application fails, hence is hereby dismissed with costs. With this dismissal the decree herein is for execution.

**DATED AND DELIVERED AT NAIROBI ON THIS 28<sup>TH</sup> DAY OF NOVEMBER 2024**

**PROF (DR) NIXON SIFUNA**

**JUDGE**

