



REPUBLIC OF KENYA



KENYA LAW
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**Amrit & another v Wachira (Civil Appeal E071 of 2022)
[2023] KEHC 245 (KLR) (20 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 245 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CIVIL APPEAL E071 OF 2022
NW SIFUNA, J
JANUARY 20, 2023**

BETWEEN

JASPETER KAUR AMRIT 1ST APPELLANT

TRAVINDER SINGH 2ND APPELLANT

AND

GLORIA MUTHONI WACHIRA RESPONDENT

RULING

1. This is an application for stay pending appeal. It has been brought in this Appeal by the Appellant. It is dated November 24, 2022. The same has been opposed by the Respondent vide the Grounds of Objection dated 9/1/2023. The Objection being mainly that the Application falls short of the legal threshold for an application for stay pending appeal. The Application is anchored on order 42 rule 6 of the *Civil Procedure Rules 2010*, which is a self-contained and self-executing provision of law with its own safety valves to meet the ends of justice, discourage the abuse of the court process, and allow a successful litigant to enjoy the fruits of his or her judgment.
2. In an Application of this nature, the Applicant has to meet the three conditions set by Order 42 Rule 6, namely;
 - a. That substantial loss may result to the Applicant unless the stay is granted;
 - b. That the application has been made without unreasonable delay; and
 - c. That the Applicant has given or offered security for the due performance of that decree.

Applying this test to this Application, I find That:



- a. The Applicants have in their Application and in the Supporting Affidavit of Rachael Njoki Appollo sworn in support thereof, demonstrated that they will suffer substantial loss as the decretal sum being over 12 Million Kenya Shillings is a huge sum.
 - b. The Application as chronologically narrated by the Applicant's Counsel in her Submissions and even on the face of the Application itself, was filed without any delay.
 - c. The Applicants have in Ground 5 of their Application and even in paragraph 11 of the Supporting Affidavit offered security in the form of an Insurance Bond. However, given that this is a money judgment, this court is more inclined towards a security that is readily available in monetary form. In this case a monetary security is to be preferred as submitted by the Respondent's Counsel in his submissions on this Application.
3. Having found that the Application meets the legal threshold prescribed by Order 42 Rule 6 on the grant of stay pending appeal, I grant the Applicants a stay pending appeal to last until the hearing and final determination of the appeal herein. The same to be on condition that they shall pay to the respondent the sum of Kshs 3 million part of the judgement sum herein and the balance thereof of Kshs 9,684,962/44 shall abide the outcome of this Appeal.
 4. The said payment of Kshs 3 million to be paid within 45 days from the date of this ruling, defaulting which this stay shall automatically lapse and the entire decretal sum shall become payable and for execution.

DATED, SIGNED AND DELIVERED ORALLY IN OPEN COURT THIS 20TH DAY OF JANUARY, 2023.

PROF N SIFUNA

JUDGE

January 20, 2023

In the Presence of:

Ms Odeo Advocate for the Appellant

Mr. Mwangi Advocate for the Respondent

Quinteen Ndubi & Jackline Njeru – Court Assistants

Mrs Odeo: I apply for a typed copy of the Ruling.

Court: This Ruling be typed and supplied to the Appellants and the Respondent upon payment of the Court charges.

PROF N SIFUNA

JUDGE

January 20, 2023

