



**Kenya Wildlife Service & another v Mangi alias Anderson Mwanyule Mangi
(Civil Appeal E003 of 2023) [2023] KEHC 21301 (KLR) (26 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21301 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E003 OF 2023
GMA DULU, J
JULY 26, 2023**

BETWEEN

KENYA WILDLIFE SERVICE 1ST APPELLANT

DANIEL KINYANJUI 2ND APPELLANT

AND

**ANDERSON MWANGULE MANGI ALIAS ANDERSON MWANYULE
MANGI RESPONDENT**

RULING

1. Before me is an application by way of Notice of Motion dated 6th March 2023 filed by the appellants under Order 42 Rule 6, Order 51 Rule 1 of the Civil Procedure Rules 2010, and Sections 1A, 1B and 3A and 65, and 79G and 95 of the *Civil Procedure Act* (Cap.21).
2. The prayers in the application are as follows:-
 1. (Spent)
 2. (Spent)
 3. That there be a stay of execution of judgment in Voi CMCC No E074 of 2021 herein, and stay of any other consequential orders of the Hon. Court pending the hearing and determination of this appeal.
 4. That the costs of this application be in the cause.
3. The application has grounds on the face of the Notice of Motion that the applicants have filed an appeal against the judgment delivered on 18th January 2023, that the 1st applicant is a national institution with mandate in conserving and managing Kenya's Wildlife, that execution of the judgment creates the risk of the 1st applicant losing property and being hampered from executing and delivering on its mandate.



4. The application was filed with a supporting affidavit sworn on 6th March 2023 by Jamuel Mwakandana Kiwinda Advocate in which it was deponed that the matter arose out of a road traffic accident involving a number of motor vehicles, and that the appeal filed herein is merited. A copy of the subject judgment and Memorandum of Appeal were annexed to the affidavit.
5. The application has been opposed through a replying affidavit sworn on 2nd May 2023 by Anderson Mwangule Mangi in which it was deponed that the initial stay of 45 days granted by the court had already lapsed, and that the present application is not merited.
6. The application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by S. M. Righa & Company Advocates for the applicants, and the submissions filed by S. N. Ngare & Company Advocates for the respondents.
7. Having considered the application, documents filed and the submissions of the parties; I note that the appeal filed herein challenges both liability and quantum of damages awarded.
8. This being an application for stay of execution of judgment or decree, it is governed by the provisions of Order 42 Rule 6 of the Civil Procedure Rules. It has three main elements for consideration by the court.
9. The first consideration is whether it was filed without undue delay. With regard to whether the application was filed without undue delay, I note that judgment in the trial court was delivered on 18th January 2023 and the respondent has indicated in the replying affidavit that the 45 days stay of execution was granted by the trial court. This application was filed on 8th March 2023.
10. In my view, from the facts and evidence disclosed to me above, I find that the application herein was filed without unreasonable delay.
11. Turning to the second parameter on whether the applicants are likely to suffer substantial loss if the stay orders sought are not granted, having perused the grounds of appeal which raise legal issues on liability, and also issues on quantum of damages, I am of the view that the applicant will stand to suffer substantial loss if stay of execution is not granted, and execution does take place before determination of appeal, as the 1st applicant might be adversely affected in executing its mandate.
12. I now turn to the third and last consideration, which is to provision of security by the applicants. I note that under ground seven (7) of the application, the applicants have indicated that they are willing to abide by any terms as to security as shall be ordered by the court.
13. In my view, the 1st applicant being a known government institution which can always be called upon to satisfy the final orders of the court, their commitment to provide security above, serves to satisfy the requirement for provision of security by the applicant. I will thus allow the application.
14. Consequently, and for the above reasons, I allow the application and order as follows:-
 - i. Stay of execution of the judgment in Voi PMCC No E074 of 2021 herein and any consequential orders arising therefrom is hereby granted pending the hearing and determination of the appeal herein.
 - ii. The costs of this application will abide the decision in the appeal.
 - iii. I will hereafter fix a mention date for the appeal for further directions.

Dated, signed and delivered this 26th day of July 2023 in open court at Voi virtually.

GEORGE DULU

JUDGE



In the presence of:-

Mr. Kibinda for the applicants

Mr. Mutua for the respondent

Mr. Otolu court assistant

