

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

CIVIL APPEAL NO.E27 OF 2021

TAHMEED COACH LIMITED.....APPELLANT

VERSUS

DEDAN MURUNGA.....RESPONDENT

R U L I N G

[1] The appellant was sued by the respondent for damages arising out of a road traffic accident which occurred on 4th September 2017 along the Amagoro – Malaba road within Busia County involving the appellant’s m/v Reg No.KBT 452F Scania Busia and a motor cycle under the control of the respondent who suffered severe bodily injuries as a consequence thereof.

After the hearing of the matter before the Magistrate’s Court at Busia judgment was entered for the respondent against the appellant in the total sum of ksh.306,000/= together with costs and interest on the 8th July 2021.

[2] Being aggrieved, the appellant filed the present appeal on the 26th July 2021 followed by the present application dated 27th September 2021, seeking the basic order that there be a stay of execution of the judgement and the accruing decree pending the hearing and determination of the appeal. The application essentially comes under **Order 42 Rule 6 of the Civil Procedure Rules** which provides for stay pending appeal if an applicant will suffer substantial loss if stay is not granted and the application has been brought without unreasonable delay. The applicant may be required to provide security for the due performance of the decree or after as may ultimately be binding on him.

[3] The application is based on the grounds set out within the Notice of Motion as buttressed by the averments contained in the appellant’s supporting affidavit deponed by its legal counsel on 27th September 2021

The respondent did not file any grounds of opposition and/or response to the application thereby implying that he was not opposed to the application. Ironically, the respondent filed written submissions purportedly in opposition to the application and indeed the appellant’s arguments in support of the application as contained in its written submissions.

[4] After due consideration of the application whether or not opposed by the respondent, this court is of the opinion that the appellant has not provided satisfactory grounds for exercise of this court’s discretion in its favour. The element of substantial loss was not established or proved against the respondent merely because the respondent is suspected to be a man of small financial means or a man of straw. In any event, the obligation to prove the fact lay on the appellant and was herein not discharge by any evidence. It has not been shown that the decretal amount would be out of the respondent’s reach should it be paid out and the appeal succeeds. Further, the appellant has not shown how the mere payment of the decretal amount to the respondent shall occasion it substantial loss considering that the amount is not what can be termed exorbitant.

[5] In sum, the application is without merit and is hereby dismissed with no orders to costs.

J.R. KARANJAH

J U D G E

[DATED AND READ THIS 21ST DAY OF FEBRUARY 2022]