



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

CIVIL APPEAL NO. E024 OF 2021

ANNAH MUTEHU NDUNDA.....1ST APPELLANT

JOSEPH KABUI MATHAIYA.....2ND APPELLANT

-VERSUS-

ANN WANJERI MWANGI.....RESPONDENT

RULING

1. This is an application dated 26/01/2021 where Appellant seeks orders for stay of execution of decree in Nyahururu CMCC 103/2018 pending hearing and determination of the appeal.

2. The same is supported by the grounds set out in the application namely:

i. That our instructing client who is Insurer of the Defendant/Applicant has filed a memorandum of appeal against judgment of Lower Court.

ii. That stay of execution granted by the Lower Court has expired.

iii. That the Respondent may execute the decree any time before this application is heard interparties.

iv. That the Applicant/Appellant will suffer substantial loss, injustice and will be highly prejudiced if stay of execution is not granted.

v. That the appeal will be rendered nugatory if the decree is executed.

vi. That the Applicants' appeal raises serious arguable issues with high chances of success as shown by the memorandum filed.

vii. That the Applicant is ready to make and undertaking on security and abide by conditions which the court may set pending the hearing and determination of the appeal.

viii. That the Respondent may not be able to refund the decretal amount in the likely event that the intended appeal is successful.

3. The same application is supported by affidavit of **Sammy Kamau Wanjiku** sworn on 26th October, 2021.

4. The application is opposed by Respondent via affidavit of **Ann Wanjeri Mwangi** sworn on 22nd December, 2021 especially the following paragraph of the affidavit of **Ann Wanjeri Mwangi** namely 4, 5, 6, 7, 9.

5. The matter came for hearing 14th March, 2022 and the parties could not agree on the compromise of the application on the issue of the amount to be deposited in joint account to await the hearing and determination of the appeal.

6. Whereas the Applicant seeks to deposit ½ of the decretal amount in joint account as security, the Respondent insists on the entire amount being so deposited.

7. The parties agreed the court to give them time to either compromise and a consent be recorded on 24th March, 2022 or court to make ruling on same issue on same date.

8. After listening to the both parties' sides and perusing the record, I find it prudent to direct that in absence of a compromise of the parties on the application herein, the orders recommending themselves are:

i. Stay of execution sought is granted on condition that Kshs.1million is deposited in joint account of parties' Advocates and Kshs.500,000/- to be deposited with Respondent's Advocate within 45 days.

ii. The parties to expedite the hearing and determination of the appeal.

iii. In default of the (i) above, the orders to stand vacated and execution to proceed.

iv. Costs in the main appeal.

DATED AND SIGNED AT NYAHURURU THIS 28TH DAY OF MARCH, 2022.

.....

CHARLES KARIUKI

JUDGE