



**Ndugu Transport Company Limited v Maina (Civil Appeal
E078 of 2021) [2022] KEHC 10553 (KLR) (24 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10553 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CIVIL APPEAL E078 OF 2021**

**GMA DULU, J
JUNE 24, 2022**

BETWEEN

NDUGU TRANSPORT COMPANY LIMITED APPELLANT

AND

PERY WAIRIMU MAINA RESPONDENT

RULING

1. Before me is an application (Notice of Motion) dated 10th November 2021 filed under section 1A, 1B, 3, 3A and 63(e) of the [Civil Procedure Act](#), as well as Order 42 and Order 51 Rule 1 of the [Civil Procedure Rules](#) 2010.
2. The application contains four (4) prayers, two of which have been spent as follows –
 1. (Spent)
 2. (Spent)
 3. The court be pleased to order stay of execution of the judgment in Makindu SPMCC No. 65 of 2019 delivered on 4th October 2021 and the decree therefrom pending the hearing and determination of the appellant's/ applicant's appeal against the same.
 4. The costs of the application be in the cause.
3. The application has grounds on the face of the Notice of Motion that the applicant has filed an appeal against the said judgment, that the respondent is a Police Officer and his earnings are insufficient to refund the colossal decretal amount of Kshs.10,078,275/= should the appeal be successful, and that the applicant is ready and willing to furnish security such as insurance bond.



4. The application was filed with a supporting affidavit sworn on 1st November 2021 by Atieno Albert Aketch the Transport Manager of the applicant in which it was deponed that the applicant had filed an appeal on several grounds, that the amount of damages awarded was excessive, and that the respondent will not be able to refund the amount if the appeal succeeded.
5. The application has been opposed through a replying affidavit sworn on 15th November 2021 by Evans M. Mochama advocate for the respondent who deponed that the appeal had no chances of success, that the applicant had not demonstrated that they would suffer substantial loss if the stay orders were not granted, and that half of the decretal amount be deposited in a joint interest earning account and half be released to the respondent's advocate.
6. The application was canvassed through written submissions, and in this regard, I have perused and considered the written submissions filed by Githinji Mwangi Associates for the appellant/applicant and those filed by Mochama & Company for the respondents. Both counsel relied on decided court cases.
7. This being an application for stay of execution of judgment or decree, it is governed by the provisions of Order 42 Rule 6(2) of the *Civil Procedures*. The rule requires an applicant to satisfy the court that –Substantial loss may result to him unless the stay order is made. That the application has been filed without unreasonable delay. That he has given such security for the due performance of such decree or order as may be ultimately binding on him.
8. With regard to whether the present application was filed without unreasonable delay, I note that the judgment was delivered on 4th October 2021 and the application and appeal were filed on 28th October 2021. I find that the application herein was filed without unreasonable delay.
9. Turning now to the issue of substantial loss, I observe that the judgment was for a liquidated sum of approximately Kshs.10,000,000/=. The grounds of appeal show that it is an arguable appeal. The financial status of the respondent and ability to repay the amount if paid is not known. I thus find that the applicant stands to suffer substantial loss if the stay orders sought are not granted. However, as the appeal is mainly on quantum of damages, I will order that part of the decretal amount be paid to the respondent.
10. With regard to provision of security by the applicant, I note that the applicant has offered to provide an insurance bond. In my view however, payment of part of the decretal amount to the respondent will satisfy the requirement of provision of adequate security by the applicant.
11. Consequently and for the above reasons, I allow the application on the basis of the following orders-
 1. Stay of execution of judgment or decree pending determination of appeal herein is granted.
 2. The stay of execution above granted is subject to the applicant paying the respondent through counsel part of the decretal amount Kshs.2,000,000/= within sixty (60) days from today.
 3. If there is a default on (2) above, the stay orders herein granted will automatically lapse and have no effect.
 4. The costs of the application will follow the decision in the appeal.

DELIVERED, SIGNED & DATED THIS 24TH DAY OF JUNE, 2022, IN OPEN COURT AT MAKUENI.

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George Dulu



Judge

