



**Multiple Hauliers E.A Ltd v Avic Jac Motors E.A Ltd (Civil Appeal
E021 of 2022) [2022] KEHC 14804 (KLR) (25 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14804 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CIVIL APPEAL E021 OF 2022
GMA DULU, J
OCTOBER 25, 2022**

BETWEEN

MULTIPLE HAULIERS E.A LTD APPLICANT

AND

AVIC JAC MOTORS E.A LTD RESPONDENT

RULING

1. Before me is an application by way of Notice of Motion dated 7th April 2022 filed by Multiple Hauliers E.A Ltd through counsel M/s Ngulli & company.
2. The application has four (4) prayers, two of which have been spent as follows –
 1. (Spent)
 2. (Spent)
 3. That the Honourable court be pleased to order stay of execution and all consequential orders arising therefrom pending the hearing and determination of the lodged appeal.
 4. That the costs of this application be in the course.
3. The application has grounds on the face of the Notice of Motion that in a ruling delivered on 10th March 2022 in Kilungu CC No. E65 of 2020, the applicant was aggrieved and has appealed to the High Court, which appeal raises serious triable issues, and that the applicant will suffer substantial loss if the orders sought are not granted.
4. The application was filed with a supporting affidavit sworn on 4th April 2022 by Winnie Awuor Paul the Legal Officer of Kanindia Insurance Co. Ltd, the insurer of the applicant which amplifies the grounds of the application and annexed the Memorandum of Appeal and ruling.



5. The application has been opposed through a replying affidavit sworn on 6th May 2022 by Joseph N. Ngigi advocate, in which it was deponed that the applicant did not satisfy the requirements for grant of the prayers sought as they did not disclose any substantial loss that cannot be remedied, thus the respondent should be let to enjoy the fruits of the judgment in its favour.
6. The applicant filed a supplementary affidavit sworn on 20th May 2022 by Winnie Owuor Paul, in which it was emphasized that the respondent did not depone or avail evidence to show that it was financially capable of repaying the sums paid in the event the appeal was successful.
7. The application was canvassed through filing of written submissions. In this regard, I have perused and considered the submissions filed by Ngulli & company advocates for the applicant, and Joe Ngigi & company for the respondent.
8. Such applications for stay of execution of decree or judgment are governed by the provisions of Order 42 Rule 6 of the *Civil Procedure Rules*. I note that an application for stay of execution in the trial court was dismissed, but the rules confer a right on the applicant to file another application in the High Court.
9. This matter relates to a disputed consent entered into in court apportioning liability to 60:40 in favour of the plaintiff. The applicant challenges the validity of that consent.
10. In my view, on the basis of the facts and evidence placed before me, I find that the applicant has demonstrated that substantial loss may occur if the stay is not granted. This is because the matter may go either way and the people who are said to have consented are agents and not the principal directly.
11. With regard to providing security, I note that none of the parties has disclosed to this court the amount involved. Again, since the matter relates to the dispute on the validity of the recorded consent, I will not order provision of security though the applicant has indicated that they will abide by the orders of the court with regard to provision of security.
12. As for the costs, they will abide the decision in the appeal.
13. Consequently, I allow the application and order as follows –
 - i. I grant stay of execution and all consequential orders pending the hearing and determination of appeal.
 - ii. The costs of the application will abide the decision in the appeal.

DELIVERED, SIGNED & DATED THIS 25TH DAY OF OCTOBER, 2022, IN OPEN COURT AT MAKUENI.

GEORGE DULU

JUDGE

