



REPUBLIC OF KENYA

IN THE HIGH OF KENYA

AT NAKURU

HCA NO.21 OF 2020

SAFARICOM LIMITED.....PLAINTIFF

VERSUS

JACOB OUMA NYINA & RUTH M. OPONDO(Suing as legal representative

of the estate of GEOFFREY OCHIENG OUMA (deceased)..1ST RESPONDENT

JUSTIN MIGIRO OIRA.....2ND RESPONDENT

BHOGALS AUTO WORLD LIMITED.....3RD RESPONDENT

RULING

1. This is a ruling on application dated 9th March 2020 to stay execution of judgment delivered on 17th January 2020 and all consequential orders pending hearing and determination of the appeal lodged by the appellant/applicant.
2. The respondents are not opposed to the application save for release of half the decretal amount to the 1st respondent and payment of costs of the lower court. The applicant is not agreeable to an order releasing half the decretal amount to the 1st respondent but instead proposes to have half the decretal amount deposited in a joint interest earning account.
3. Counsel for the 1st respondent argued that the 1st respondent is a person of means; that he is a pastor earning monthly salary of kshs 70,000. He further argues that the appeal is only on quantum and this matter has been pending since 2012.

ANALYSIS AND DETERMINATION

4. I have perused the copy of memorandum of appeal attached to this application and note that contrary to submissions by counsel for the respondent, the applicant is appealing on both liability and quantum. The applicant has appealed against being held vicariously liable for acts of the 2nd respondent.
5. I note that judgment in this matter was delivered on 17th January 2020 and appeal is dated 10th February 2020 and filed on 10th March 2020. The appeal was filed without delay. In respect to whether the applicant is likely to suffer substantial loss, the 1st respondent has indicated that he is a pastor earning kshs 70,000. What I see attached to his affidavit is ordination certificate and KRA registration of the church but there is no financial statement to show his earnings. It is not therefore certain that he would be able to refund the applicant without difficulty in the event that the appeal succeed.
6. In view of the fact that the applicant is challenging liability arguing that the 1st defendant was an employee of the 3rd defendant and applicant should not have been held vicariously liable, it would be safe to have the decretal amount deposited in a joint interest earning account rather than having it released to the 1st respondent.

7. FINAL ORDERS

1. Stay of execution do issue pending appeal on condition that half the decretal amount is deposited in a joint interest earning account in the names of counsel for the applicant and the 1st respondent.

2. Deposit to be done within 30 days from the date of this ruling.

3. Failure to comply with 1 & 2 above, execution process may go on.

Ruling dated, signed and delivered via zoom at Nakuru This 28th day of January, 2021

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RACHEL NGETICH

JUDGE

In the presence of:

Jenifer - Court Assistant

Mr. Ngugi counsel for the 1st Respondent

Mr. Maina counsel for the Appellant

Ms. Chelule counsel for the 3rd Respondent