



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. E147 OF 2020

RUTH MUTHONI MURIGI.....APPELLANT

-VERSUS-

HENRY NJUGUNA KAMAU.....RESPONDENT

RULING

- 1) Ruth Muthoni Murigi, the appellant herein took out the Motion dated 15.10.2020 whereof she sought for an order for stay of execution of the decree issued by the trial court pending the hearing and determination of this appeal. She swore the affidavit filed in support of the motion.
- 2) When served with the aforesaid motion, Henry Njuguna Kamau, the respondent herein filed the replying affidavit sworn by Roselyne Kihara and grounds of opposition to oppose the motion. When the motion came up for interpartes hearing, this court invited learned counsels appearing in the matter to make oral submissions.
- 3) Mr. Muriithi, learned counsel for the appellant urged this court to grant the order sought. He stated that unless the order is granted the appellant will suffer substantial loss in that the respondent will execute the decree thus rendering his appeal nugatory.
- 4) The learned advocate pointed out that the court found the parties equally liable for the accident hence it is unfair to let the appellant suffer. The appellant stated that the motion was timeously filed and that the appellant is ready to offer security for the due performance of the decree.
- 5) On his part, the respondent beseeched this court to dismiss the appellant's motion stating that the appellant had failed to demonstrate the substantial loss she would suffer if the order for stay is refused. The respondent however admitted that the application was timeously filed.
- 6) The background of this motion is straightforward. On 13.11.2011, the respondent was lawfully driving motor vehicle registration no. KBK 620S along Naivasha Road in Nairobi when it collided with the appellant's motor vehicle registration no. KAP 311P causing damage to the respondent's motor vehicle.
- 7) The respondent filed a material damage claim against the Appellant for ksh.361,248/=. The suit was defended. Hon. Kagoni, learned Principal Magistrate apportioned liability in the ratio of 50%:50%. Judgment was entered in favour of the respondent in the sum of ksh.324,336/= being repair charges plus interest and costs.
- 8) The appellant being aggrieved preferred this appeal. The appellant is now before this court seeking for stay of execution of the decree pending appeal.
- 9) The principles to be considered in determining an application for stay of execution pending appeal are set out under Order 42 rule 6 of the Civil Procedure Rules. **First** is that the application must be filed without unreasonable delay. In this case, the respondent concedes that the application was filed without

unreasonable delay. The record shows that the motion was filed on 16.11.2020 while judgement was delivered on 21st September 2020. I am satisfied that the delay in filing the motion is reasonable.

10) The **second** principle is that the applicant must show that she would suffer substantial loss if the order for stay of execution of the decree is denied. In this case, the main ground advanced in support of the appellant's assertion is that if the order for stay of execution is declined the respondent would proceed to execute to recover the decretal sum to utter detriment of the appellant.

11) It is clear in my mind that execution is a lawful process underpinned by statute and cannot therefore be regarded as a substantial loss. I find that the appellant has failed to establish the substantial loss she would suffer if the order for stay is denied.

12) I have previously stated that where an applicant fails to establish the substantial loss then the order for stay would be denied. In the circumstances the third principle for the provision of the decree for the due performance of the decree should not be considered since the same is dependent on the second principle.

13) In the end, I find no merit in the motion dated 15.10.2020.

The same is dismissed with costs abiding the outcome of the appeal.

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 8th day of January, 2021.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent