



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL APPEAL NO. E170 OF 2020**

**LEONARD MUNYUA & GRACE SIMALOI SANKUNTA**

**T/A MUNLEO HARDWARE &**

**METAL FABRICATION .....APPELLANT**

**VERSUS**

**EQUITY BANK KENYA LIMITED .....RESPONDENT**

**RULING**

The appellants filed an application by way of Notice of Motion stated to be under Order 42 Rule 2, Sections 1, 1A, 3 and 3A of the Civil Procedure Act, for orders that the respondent be restrained from executing a decree from the lower court pending the appeal filed herein. The judgment of the lower court was delivered on 17<sup>th</sup> June, 2020. This application was filed on 15<sup>th</sup> August, 2020 and therefore there was no delay in the circumstances.

Although the cited provisions do not relate to stay of execution or injunction orders, I believe appellants should have a hearing. I recognize the fact that the appellants have the right of appeal while at the same time, the respondent has a judgment in its favour.

The appellants have demonstrated that there is no risk they pose to the respondent if an order of stay is granted because, the value of securities held by the respondent far exceed the decretal sum. In that case therefore, the respondent may not suffer any substantial loss in the event the appeal fails.

I am inclined therefore to stay the execution of the lower court judgment until such time the appeal is heard and determined. The costs shall abide by the decision of the appeal.

***Dated, signed and delivered at Nairobi this 11<sup>th</sup> day of February, 2021.***

**A. MBOGHOLI MSAGHA**

**JUDGE**