

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. E211 OF 2021

JOSEPH WAMWATI MWANGI.....1ST APPELLANT

DAVID KIURU MAINA.....2ND APPELLANT

- VERSUS -

STEPHEN WAMBUA MULINGE.....RESPONDENT

RULING

The Applicants filed a Notice of Motion dated 5th May, 2021 seeking for reinstatement of the orders granted on 20th April, 2021 in their application dated 19th April, 2021 as the temporary orders initially issued had lapsed. That the delay in complying with the court orders requiring them to deposit Kshs. 200,000 in court was due to technical hitches with the judiciary account.

The Application is supported by the affidavit of **JANEROSE M. NANJIRA** sworn on 5th May, 2021. On 28th June, 2021 when the application came before this court for hearing parties through their counsel, Miss Nanjira and Miss Oseko for the Applicants and Respondent respectively, informed the court that the application was not objected to save for the issue of security.

The purpose of security needed under Order 42 of the Civil Procedure Rules is not to punish the Applicant but is to guarantee the due performance of such decree or order as may ultimately be binding on the applicant. This was advanced by Nzioka J. in the case of **Badminton Confederation of Africa v Peter Gacheru [2019] eKLR**, where the court held that;

“16. It suffices to note the general principle that guides issuance of an order for security for costs is that, “there is a significant risk of the Defendant suffering an injustice by having to defend the proceedings; with no real prospects of being able to recover his costs if he is eventually successful. (See the decision in the case of; Berkeley Administration Inco. & Others vs Maclelland & others. A Plaintiff being a resident abroad is not per se a ground for making an order. (See the case of; Danilina vs Chernukhiri & Others (2018) EWCA 1802, which applied the sliding scale.”

In balancing the interests of the parties and guarantee due performance I direct that the Applicants do issue a bank guarantee in favour of the Respondent for Kshs. 200,000 being the total decretal amount within forty-five (45) days from the date of this ruling. In default the stay of execution pending appeal shall stand vacated and the respondent shall be at liberty to execute. Costs of the application shall abide the outcome of the appeal.

DATED AND DELIVERED AT NAIROBI THIS 29TH DAY OF JULY, 2021.

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S. J. CHITEMBWE

JUDGE