



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
(CORAM: CHERERE-J)
CIVIL MISC. CASE NO. EO28 OF 2021

BETWEEN

KENSILVER EXPRESS LIMITED.....1ST APPELLANT/APPLICANT

DOUGLAS NTAMBURA.....2ND APPELLANT/APPLICANT

AND

JUDY NJOKI GATUMO.....RESPONDENT

RULING

Background

- 1) This appeal arises from a judgment in respect of an accident involving the 1st Appellant's motor vehicle KAW 097K that was involved in an accident on 06th November, 2010.
- 2) On the 08th February, 2021, the court in **MAUA CMCC NO.189 OF 2013** entered judgment in favour of the Respondent as against the Appellants/ Applicants jointly and severally for Kshs. 5,500,000/-.
- 3) By a notice of motion dated 22nd February, 2021 and filed on 24th February, 2021, Applicant seeks orders for:
 - 1) **This Honourable Court Stay of execution of judgment in MAUA CMCCNO.189 OF 2013 pending the hearing and determination of the appeal**
 - 2) **Costs be provided for**
- 4) The notice of motion is premised on grounds among others that the Applicant is aggrieved by the judgment of the trial court and has filed an appeal which has overwhelming chances of success.
- 5) The application is also supported by an undated affidavit sworn by David Lucas Onyengo, the Applicant's Supervisor who reiterates the grounds on the face of the application.
- 6) The application is opposed on the basis of a replying affidavit sworn by the Respondent on 06th May, 2021. She contends that the Applicants have not demonstrated substantial loss in the event that the stay orders are not granted.

Analysis and Determination

- 7) I have considered the application in light of affidavits on record and annexures thereto. It is apparent that this appeal and **Civil Appeal 20, 19 & 18 of 2021 (Consolidated)** arise from judgments for damages arising out of the same accident.
- 8) The court has already made a decision on applications for stay of execution in **Civil Appeal 20, 19 & 18 of 2021 (Consolidated)**. To avoid the risk of coordinate courts granting conflicting orders, this court finds that it would be in the interest of justice that similar orders as made in **Civil Appeal 20, 19 & 18 of 2021 (Consolidated)** do apply to this application.

9) Consequently, the notice of motion dated 22nd February, 2021 and filed on 24th February, 2021 is allowed in the following terms:

i) An order for stay of execution of the Judgment and Decree in MAUA CMCC NO.189 OF 2013 pending the filing, hearing and determination of the intended Appeal is hereby issued.

ii) The Applicants shall within fourteen (14) days from the date of this order pay the Plaintiff/Respondent a total of Ksh. 500,000/- (Kenya Shillings Five hundred thousand).

iii) Within 60 days from the date hereof, the Applicants shall deposit the balance of the decretal sum being Ksh. 5,000,000/=, in a joint interest earning account in names of the respective Advocates for the parties.

iv) In default of compliance with orders ii) and iii) above, the orders for stay shall lapse.

v) The costs of the applications shall abide the outcome of the Appeal.

DATED IN MERU THIS 29th DAY OF July 2021

T.W. CHERERE

JUDGE

Court Assistant - Morris Kinoti

For Applicants - Ms. Aketch instructed by Vivian Loice Aketch & Co. Advocates

For Respondent - N/A for Michael Ngunjiri & Co. Advocates