



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. E224 OF 2021

LUCY WANGARI MWANGI.....1ST APPELLANT

KIHORO HUMPHREY..... 2ND APPELLANT

VERSUS

DAVID NDIRANGU GITAU..... RESPONDENT

RULING

The applicants filed a Notice of Motion dated 23rd April, 2021 seeking for the following orders;

1. Spent

2. Spent

3. THAT this Honourable Court be pleased to stay any further proceedings in Milimani Chief Magistrate's Court Civil Case No. 3330 of 2019 and in particular execution of judgment delivered on 16th April, 2021 pending the hearing and determination of the Appeal herein.

4. THAT the costs of this Application be in the cause.

5. Any other and/or further orders that this Honourable Court deems fit to grant.

The application is premised on the grounds thereunder and the affidavit of Kevin Ngure sworn on 23rd April, 2021. In opposition, the Respondent filed a replying affidavit sworn on 25th April, 2021. The applicant being dissatisfied with the Judgment of Hon. D.O. Mbeja (Mr.) P.M in **Milimani Chief Magistrate's Court Civil Case No. 3330 of 2019; David Ndirangu Gitau vs Lucy Wangari Mwangi & Kihoro Humphrey** seeks to appeal against the award of general damages.

On 4th July, 2021 when the file came before this court for hearing Mr. Mandela for the applicant confirmed that the parties were in the process of negotiation and sought for more time. Later on 14th July 2021, Miss Oseko for the respondent confirmed that the application for stay is not opposed but had not agreed on the terms of the stay. Mr. Mandela for the applicant informed the court that the applicant is willing to provide a bank guarantee.

Analysis/Determination:

The purpose of security was well captured by Gikonyo J. in the case of **Arun C Sharma vs. Ashana Raikundalia t/a Rairundalia & Co. Advocates [2014]eKLR** where the court stated that:

“The purpose of the security needed under Order 42 is to guarantee the due performance of such decree or order as may ultimately be binding on the applicant. It is not to punish the judgment debtor...Civil process is quite different because in civil process the judgment is like a debt hence the applicants become and are judgment debtors in relation to the respondent. That is why any security given under Order 42 rule 6 of the Civil Procedure Rules acts as security for due performance of such decree or order as may ultimately be binding on the applicants. I presume the security must be one which can serve that purpose.”

The applicants have indicated their readiness to furnish a bank guarantee as security for the due performance of the decree. This is a mark of good faith that the application for stay is not meant to deny the Respondent the fruits of his judgment. In **Focin Motorcycle Co. Limited vs. Ann Wambui Wangui & another [2018] eKLR**, it was stated that:

“My view is that it is sufficient for the applicant to state that he is ready to provide security or to propose the kind of security but it is the discretion of the Court to determine the security. The Applicant has offered to provide security and has therefore satisfied this ground for stay.”

I agree with the applicants and direct that they do provide a bank guarantee for Kshs. 1,203,550 being the total decretal amount within 45 days from the date of this ruling, failing which the stay of execution pending appeal stand vacated. Costs of the application shall abide the outcome of the appeal.

Dated and signed at Nairobi this **29th** day of **July**, 2021

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S. CHITEMBWE

JUDGE