

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL APPEAL NO. 240 OF 2020

MINUTEMAN AUTOWORLD LTD.....1ST APPELLANT/APPLICANT

CHARLES ODERO LIYAKHA.....2ND APPELLANT/APPLICANT

ROMENAH MUTAVE KALOKI.....3RD APPELLANT/APPLICANT

VERSUS

MICHAEL NYAMWEYA MAKORI.....RESPONDENT

RULING

1. The Application dated 11th March, 2021 seeks orders **that this honourable court be pleased to grant stay of execution of the judgment delivered by Hon. Orange K.I (Mr.) Senior Resident Magistrate in Nairobi CMCC No. 6646 of 2015 on the 22nd May, 2020 pending hearing and determination of the appeal.**

2. It is stated that the appeal is arguable with high chances of success. The delay herein is blamed on the delivery of the judgment without notice and further delay in the supply of typed proceedings. It is further averred that the outbreak of the COVID 19 Pandemic caused further delay. The Applicant is apprehensive that the Respondent may not be able to refund the decretal sum in the event that the Appeal is successful. The Applicant is willing to deposit security for the due performance of the decree.

3. In a replying affidavit filed in opposition to the application, it is stated that the Appeal has no chances of success. That the application is aimed at delaying the Respondent from enjoying the fruits of the judgment. The court was urged to have the decretal sum deposited in court and 50% of the same released to the Respondent to enable him seek treatment for the injuries sustained in the accident the subject matter of the suit.

4. I have considered the application and the response

5. Order 42 rule 6(2) Civil Procedure Rules 2010 provides for stay of execution as follows:

“No order for stay of execution shall be made under sub-rule (1) unless –

(a) The court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

(b) Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

6. The judgment of the lower court was delivered on 22nd May, 2020. The instant application was filed on 16th March, 2021. The delay is inordinate. It is noted that the Appeal was filed within time. Thus the Applicant could have also filed the application despite the outbreak of the COVID 19 Pandemic, though it may have exacerbated the circumstances. This court is inclined to give the Appeal a chance to be heard on merits upon terms and conditions. It is however noted that the appeal is on the whole judgment and therefore it would not be appropriate to release part of the decretal sum at this stage.

7. With the foregoing, I allow the application on condition that the Applicant do deposit the decretal sum in a joint interest earning bank account of the Advocates for the parties or in court within 30 days from the date hereof.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF OCTOBER, 2021

B. THURANIRA JADEN

JUDGE