



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. E057 OF 2021**

**JOHN WAIHAKA THUO.....1<sup>ST</sup> APPELLANT /APPLICANT**

**WILSON MURIITHI.....2<sup>ND</sup> APPELLANT /APPLICANT**

**VERSUS**

**TYSON ASANO AKARANGA.....RESPONDENT**

**RULING**

1. The Notice of Motion by the applicants dated **14<sup>th</sup> June 2021** prays for the following orders;

**a) This court be pleased to grant an order of further stay of execution of the judgement delivered on 28<sup>th</sup> January 2021 in Nakuru cmcc no. 55 of 2019 pending the interpartes hearing of this application.**

**b) This court be pleased to grant an order of stay of further execution of the ruling /order issued on 27<sup>th</sup> May 2021 in Nakuru cmcc no.55 of 2019 pending the hearing and determination of the appellants /applicants appeal i.e. Nakuru hcc no. E057 of 2021.**

2. The application is supported by the affidavit of **John Waithaka Thuo** the applicant sworn on the same date.

3. The issues herein are clear and straight forward as per his grounds on the face of the application and the affidavit. The trial court awarded the respondent judgement for a sum of Kshs. 550,000 together with costs and interest. The applicants were dissatisfied and they file appeal no. E08 OF 2021. Contemporaneously they filed an application for stay pending appeal.

4. The court granted stay on condition that the applicants pay to the respondent 75% of the decretal sum and the balance of kshs25% be deposited in a joint interest account all within 21 days.

5. The applicants were not happy with the said ruling and they file another application which was refused hence this application. Essentially therefore the applicants are arguing that the trial court ought not to have ordered that the respondent be paid such a sum for this would meant that they shall receive substantial sum before the appeal is heard.

6. They argued that they had an arguable appeal and should the same be paid out the appeal shall be rendered nugatory. They were however willing to deposit any security as may be ordered by the court.

7. The respondent vide his replying affidavit dated 8<sup>th</sup> July 2021 opposed the same on the grounds that the same was baseless as the applicants had not complied with the trials court order. That the respondent was able and willing to refund the sum should the appeal in any event be successful.

8. In any case the balance of the amount was still substantial and that the appeal does not raise any triable issues.

9. The court has perused the application and all that the applicant is telling this court is to interfere with the discretion of the trial court in granting stay in terms of **Rule 42 of the Civil Procedure rules**. The above common rules are discretionary and this court shall interfere only if the same is illegal or was granted without due consideration of some salient factors.

10. In this case I respectfully disagree with the applicant. The condition given by the court is not onerous at all. There is no evidence that the respondent in the event that the appeal succeeds he shall not be able to refund the same. More importantly the applicant has not demonstrated how he stands to suffer any prejudice by complying with the court orders.

11. In the premises the application is unmeritorious and it is hereby dismissed with costs.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAKURU THIS 16<sup>TH</sup> DAY OF DECEMBER 2021.**

**H K CHEMITEL.**

**JUDGE**