



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL APPEAL NO. 161 OF 2020**

**SUNNY HAULIERS LIMITED.....APPELLANT**

**VERSUS**

**CHARLES WAMBUA.....RESPONDENT**

**RULING**

There is before me an application by way of Notice of Motion dated 17<sup>th</sup> April, 2020 seeking an order that there be a stay of execution pending the hearing of the appeal lodged herein. The decision of the lower court was made on 5<sup>th</sup> March, 2020 and this application was filed on 5<sup>th</sup> May, 2020.

After the lower court judgment, stay of execution was allowed for 30 days. Computing the time after the said 30 days, this application was filed timeously. The application is based on the grounds set out on the face thereof, and the supporting affidavit sworn by the advocate for the applicant. It is opposed and there is a replying affidavit sworn by the respondent. Parties have also filed submissions.

I have considered the said submissions alongside the provisions of law and in particular Order 42 rule 6 of the Civil Procedure Rules. In the Memorandum of Appel, the appellant is aggrieved by both the finding of liability and quantum. The right of appeal is guaranteed while on the other hand, the respondent has a judgment in his favour.

The applicant is ready to deposit half of the decretal sum pending the hearing of the appeal. In balancing the interests of both parties, I hereby allow the application on the following terms; a)The applicant shall pay the respondent the sum of Kshs. 300,000/= .

b) The applicant shall also cause to be deposited in an interest earning account in the names of both advocates a sum of Kshs. 500,000/=.

c) The above conditions shall be complied with within 45 days from the date of this ruling.

d) In default the execution shall proceed.

The costs of this application shall abide by the decision of the appeal.

***Dated, signed and delivered at Nairobi this 30<sup>th</sup> day of July 2020.***

**A. MBOGHOLI MSAGHA**

**JUDGE**