

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 144 OF 2019

PETER NDIRANGU KIHARA.....APPELLANT

VERSUS

DON EDWARD OSOME.....1ST RESPONDENT

JAMES KAMAU KINORO.....2ND RESPONDENT

SIMON KABUI NJAU.....3RD RESPONDENT

RULING

This is an application by way of Notice of Motion under Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules, seeking an order of stay of execution pending the hearing and determination of an appeal lodged by the appellant from the Judgment and decree of the lower court delivered on 15th February, 2019.

The application is supported by an affidavit sworn by the appellant in addition to the grounds set out on the face of the application. There is a replying affidavit sworn by the advocate for the respondents herein in opposition to the application. Both counsel agreed that the application be decided on affidavit evidence.

There is already a Memorandum of Appeal filed on 18th March, 2019. The lower court judgment relates to an award made in favour of the 1st respondent against the appellant following a road traffic accident. The lower court found evidence to the effect that the appellant was to blame for the same.

There was not inordinate delay in lodging the application because after the lower court judgment, stay of execution was allowed which ended on 15th March, 2019 and this application was filed on 5th April, 2019.

There is a valid judgment in favour of the 1st respondent. On the other hand, the appellant has a right of appeal. The appellant has offered to deposit the entire decretal sum as security for grant of the orders sought. That is not an unreasonable offer.

Balancing the interests of both parties, I allow the application for stay of execution on condition that, the appellant shall deposit the entire decretal sum in an interest earning account in the names of both advocates on record for the parties within 30 days from the date of this ruling. The costs shall be on appeal.

Dated, signed and delivered at Nairobi this 25th Day of July, 2019.

A. MBOGHOLI MSAGHA

JUDGE