

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 83 OF 2019

BUTAMO SHARON.....APPELLANT

VERSUS

MESHACK NG'ANG'A KANYONI

(Suing as the administrator of the estate of the late

SAMUEL KAMUNGE NG'ANG'A.....RESPONDENT

RULING

There is a judgment in favour of the respondent against the appellant following a suit in the lower court. The appellant was aggrieved by the said judgment and lodged an appeal by way of Memorandum of Appeal filed on 18th February, 2019.

This is an application for stay of execution of the lower court judgment which was delivered on 23rd January, 2019. The application which is by way of Notice of Motion under Order 42 Rule 6 of the Civil Procedure Rules, Sections 1A, 1B, 3A and 63 E of the Civil Procedure Act, is supported by an Affidavit sworn by the legal Officer of the insurers of the appellant alongside grounds set out on the face of the application. The application is opposed and there is a replying affidavit sworn by the respondent.

Order 42 Rule 6 of the Civil Procedure Rules is clear on the conditions that apply in such applications. The Memorandum of Appeal was filed timeously. The application was also filed within reasonable time because after the judgment, the respondent was granted 30 days stay of execution which period ended on or about 23rd February, 2019 and this application was filed on 27th March, 2019.

The appellant is supposed to demonstrate that substantial loss may result if stay is not granted. I have considered the attendant circumstances and the authorities cited. The appellant has a right of appeal while at the same time the respondent has a judgment he wishes to execute. I am called upon to balance the interests of both parties.

There was a consent on liability recorded by the parties before the assessment of damages was done by the court. Indeed, the appeal is against quantum of damages assessed by the court.

I have considered the submissions of the parties. The appellant has offered to provide security for any decree that may be issued against him. That should be sufficient guarantee to the respondent in the event the appeal is dismissed. However, having observed that the appeal is on quantum only, I allow the application for stay of execution on condition that the appellant pays respondent a sum of Kshs. 1,500,000/=, and deposit the balance of the decretal sum in an interest earning account in the names of both advocates for the parties. These conditions shall be met within 30 days from the date of this ruling and in default thereof execution shall follow. The costs shall abide by the result of the appeal.

Dated, signed and delivered at Nairobi this 23rd Day of October, 2019.

A. MBOGHOLI MSAGHA

JUDGE