

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 295 OF 2014

CHARLENE NJERI KURIA.....PLAINTIFF

VERSUS

SIMON GITU MBIRUA.....1ST DEFENDANT

GITU GEOFFREY.....2ND DEFENDANT

RULING

On 30th November, 2016 the court delivered a judgment in favour of the plaintiff against the two defendants in the total sum of Kshs. 34,297,222/=. The plaintiff's case against the defendants was as a result of a road traffic accident where she suffered serious injuries. The parties had entered a consent judgment on liability to the extent of 90% against the defendants and 10% on the part of the plaintiff.

There is evidence that the insurance company that covered the defendant's motor vehicle had paid a sum of Kshs. 3 Million towards the settlement of the decree. There is now before me an application dated 29th September, 2017 by way of Notice of Motion for the order that there be a stay of execution pending the determination of an appeal which however is yet to be lodged. There is a prayer that leave be granted to extend the time within which to file the appeal.

The principles upon which the court may act in applications for stay of execution are well settled and are specifically set out under Order 42 Rule 6 (2) of the Civil Procedure Rules. The court has to be satisfied that there may be substantial loss on the part of the applicant if such an order is not granted, and that the application is made without unreasonable delay.

The court may also order the posting of security for the due performance of a decree or order that may ultimately be binding on the applicant.

The defendants have the right of appeal which they are entitled to pursue. In that regard, I grant the order that the time for them to lodge an appeal be extended by a period of 30 days from the date of this ruling. On the issue of stay of execution I have taken into consideration the submissions filed by both counsel and the authorities cited which I need not repeat in this ruling.

The plaintiff holds a judgment in her favour and part of that judgment relates to costs of medication which she still undergoes following the accident. She is not party to the policy between the defendants and the insurer and therefore cannot be drawn into the dispute between the defendants and the insurer.

Before the delivery of the Judgment in question, both parties made substantial submissions on quantum of damages. The defendants had submitted that an award of Kshs. 9.6 Million was sufficient to compensate the plaintiff.

The insurance company having settled the claim to the extent of Kshs. 3 million there is a balance of about Kshs. 6.6 Million to bridge the gap of the defendant's submission. Even if the defendants were to submit that the sum due and payable to the plaintiff following the judgment is substantial, they have not given any explanation as to why they have not even offered to pay the sum of Kshs. 6.6 Million to bridge the gap between what the insurer has paid and what they submitted.

I have already observed that the plaintiff is still undergoing treatment and it is only fair and just, going by the extent of liability, she receives the fruits of her judgment. Whether or not the plaintiff has an arguable appeal is not for me to decide at this stage.

Having weighed one thing against the other, I am persuaded the defendants should be granted a stay of execution provided they pay the plaintiff the sum of Kshs. 6 Million within the next 60 days from the date of this ruling. They shall further post a bank guarantee of Kshs. 20 Million within the next 60 days pending the determination of the appeal. In default of the above conditions execution shall proceed. The costs shall be on appeal.

Dated, signed and delivered at Nairobi this 22nd Day of February, 2018.

A. MBOGHOLI MSAGHA

JUDGE