



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. 22 OF 2017**

**REUBENT CHERUIYOT LANGAT.....1<sup>ST</sup> APPELLANT/APPLICANT**

**RICHARD KIPYEGON LANGAT.....2<sup>ND</sup> APPELLANT/APPLICANT**

**-VERUS-**

**KIMUTAI ARAP KOSKE JOHN (Suing as personal**

**representative of PATRICK KIPNGENO BETT.....RESPONDENT**

**RULING**

By way of a Notice of Motion application dated the 1<sup>st</sup> day of December 2017 the applicant seeks the following orders:-

1. Spent

2. That the court be pleased to grant the applicants a stay of execution against the Judgment in CMCC NO. 17 of 2017 delivered on 18<sup>th</sup> October 2017 and the subsequent ruling delivered on 29<sup>th</sup> November 2017 pending the hearing and determination of this application.

3. That the court be pleased to grant the applicant stay of execution against the Judgment in CMCC No. 17 of 2017 pending the hearing and determination of the appeal against the ruling.

The grounds are:-

(a) That Judgment was entered in favour of the Respondent and against the applicants on 18<sup>th</sup> October 2017 for Kshs.5,035,499/= being the whole quantum less 10% contributory liability.

(b) The applicants being dissatisfied with the Judgment on quantum preferred an appeal being civil appeal No. 22 of 2017 and filed an application for stay pending an appeal on 30<sup>th</sup> October 2017.

(c) The trial court delivered a ruling against the applicants on 29<sup>th</sup> November 2017 compelling them to pay half of the decretal sum (being Judgment and costs) to the Respondents and the other half to be deposited in a joint interest earning account by both counsels.

(d) That the trial magistrate made the ruling in error and without appreciating the provisions of S.5(b) (IV) of the Insurance (motor vehicle third party risks) Act which limits the amount the insurance company (Directline Assurance Company) defending this matter on behalf of the Respondents under the rights of subrogation can pay.

(e) That the applicants are dissatisfied with the conditions of stay ordered by the trial magistrate and have preferred the present appeal against the whole ruling of the trial magistrate.

(f) The applicants do not, however, enjoy any stay of execution necessitating the filing of this instant application.

(g) The applicant is apprehensive and anxious that the plaintiff may execute the judgment before the applicants have had a chance to have their appeal determined on merits

(h) The applicant has an arguable appeal which raised triable issues that ought to be heard and determined on appeal by this court.

(i) The applicants and more specifically, the insurer Directline Assurance limited is willing to abide by stay conditions within the ambit of the provisions of the law. S. 5(b) (IV) of the Insurance (Motor Vehicle Third Party Risks) Act up to the statutory limit of the Kshs 3 million.

The application is opposed on the grounds that it lacks merit

2. That the appeal filed on 1<sup>st</sup> December 2017 lacks merit and has no chance of success.

3. That since the appellant is appealing on the discretion of the court, justice demands that they release part of the judgment sum to the Respondent and secure the balance in a joint account.

On 19<sup>th</sup> December 2017 when the matter came for interparties hearing counsel for the applicant Miss Langat did ask for substitution of the orders sought so that Kshs.1.5 million be deposited in court instead of a joint account.

I have noted that the applicants have already deposited in court, two cheques numbers 635644 and 63564 for the amounts of Kshs.990,000/= and Kshs.510,000/- respectively totaling Kshs.1.5 million and they have been issued with a Deposit receipt No. 0191280 dated 12<sup>th</sup> March 2018.

The applicants are willing to abide by stay conditions within the ambit of S.5 (b) (IV) of the Insurance Act up to the statutory limit of Kshs.3 million and are willing to pay the Respondent Kshs.1.5million.

The application before the court is for stay but the main issue is the conditions of that stay.

I find the proposal by the applicants to be fair and reasonable in the circumstances of this case. They have shown their seriousness by depositing Kshs.1.5 million in court.

I find the application has merit and I grant stay of execution against the judgment in CMCC No. 17 of 2017 delivered on 18/10/2017 and the subsequent ruling delivered on 29/11/2017 pending the hearing and determination of the appeal, on the condition that the applicants do deposit in court the sum of Kshs.1.5 million (which they have already done) and pay to the Respondents the sum of Kshs.1.5 million (if they have not already done so) within 14 days from today costs to the cause.

Ruling delivered dated and signed this 14<sup>th</sup> day of March 2018 in open court and in the presence of learned counsel for the applicants (absent) learned counsel for the Respondents. Miss Chemutai holding brief Meroka, court administrator Mr. Rotich.

**M. MUYA**

**JUDGE**

**14/3/2018**