



**IN THE HIGH COURT OF KENYA**

**AT MARSABIT**

**CIVIL APPEAL NO.12 OF 2017**

**KENYA WILDLIFE SERVICES.....APPELLANT**

**VERSUS**

**GEOFREY KIRIMI MWITI .....RESPONDENT**

**RULING**

The application dated 13<sup>th</sup> December, 2017 is seeking an order of stay of execution of the judgement of the trial court delivered on 23<sup>rd</sup> November, 2017 in Marsabit PMCC No.29 of 2015. It is supported by the affidavit of Doreen Mutunga. The respondent filed a replying affidavit sworn on 22<sup>nd</sup> December, 2017.

Counsel for the applicant submit that the intended appeal has high chances of success. The case involves a road traffic accident and the amount awarded by the trial court is excessive. The respondent intends to execute and the applicant will suffer great damage and loss. The application has been made without undue delay. The applicant is willing to comply with any reasonable conditions imposed by this court.

Counsel for the respondent admit that the application has been made without undue delay. The judgment was delivered on 13.12.2017. The application was filed 20 days later on 23.11.2017. Counsel for the respondent maintains that the application lacks merit and should be dismissed. I do agree that the application was filed timeously.

The next issue involves the merits of the application. The respondent submit that the respondent has a constitutional and legitimate expectation to be compensated by the applicant. The issue involves negligence of the applicant. The respondent was the applicant's employee. There is no proof that the respondent will not be able to refund the decretal sum if it is released to him. The applicant is ready to furnish a bank guarantee equivalent to a portion of the decretal sum but this is not agreeable to the respondent.

There is no doubt that the application was filed without undue delay. The trial court found the applicant 100% liable. Ksh.3.5million was awarded as general damages. This is a substantial sum and the applicant is entitled to pursue the appeal.

The respondent is a public corporation which has been in existence for many years. The applicant's capacity to settle the decretal sum is not in doubt. The appeal has already been filed. The proceedings have been typed and the appeal can be heard and determined within 90-120 days. I do find that it would be imprudent for this court to impose conditions on the applicant while granting the prayers for stay of execution. I am satisfied that the applicant is in a position to satisfy the decretal sum. The Courts impose conditions where the applicant's status in relation to settling the decree is doubtful or may change and disadvantage the decree holder. That cannot be said of the applicant herein.

I do find that the application is merited and is hereby granted as prayed. The applicant to file a record of appeal and serve within thirty (30) days hereof. Costs of the application shall follow the outcome of the appeal.

**Dated, Signed and Delivered at Marsabit this 8<sup>th</sup> day of March 2018**

**S. CHITEMBWE**

**JUDGE**