

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL OF 18 OF 2018

DIRECTLINE ASSURANCE COMPANY LTD.....APPELLANT

VERSUS

SIMON CHEGE NGUGI..... RESPONDENT

LAWRENCE MURIUNGI GICHUNGEINTERESTED PARTY

RULING

This is an application by way of Notice of Motion dated 19th January, 2018 seeking an order that there be a stay of execution pending the hearing of the appeal filed herein. There is a judgment in favour of the respondent in the sum of Ksh. 7,462,000/= .

The respondent had sued the appellant and an interested party for orders that there be a declaration that the appellant had breached the contract with him and that his motor vehicle be returned. He also claimed loss of user.

The interested party in the lower court was a passenger in motor vehicle registration No. KBB 105 while the respondent was the owner of motor vehicle registration No. KBB 854 G. Incidentally, the appellant had covered both vehicles which were involved in the road traffic accident.

The appellant was aggrieved by the judgment of the lower court and filed the Memorandum of Appeal dated 16th January, 2018 raising several grounds to challenge the decision of the lower court. The provisions of law cited in the present application are Order 22 Rule 22 (1) of the Civil Procedure Rules, Sections 1A,1B,3A of the Civil Procedure Act, Articles 48 and 159, (2), (b), (d) of the Constitution.

The application is supported by an affidavit sworn by the Head of Claims in the appellant's office alongside several grounds which appear on the face of the application. The advocate for the interested party has filed grounds of opposition. All parties have filed submissions herein and cited several authorities.

The appellant has the right of appeal which it has exercised by way of the Memorandum of Appeal already filed. Before then, several applications had been filed before the lower court relating to the same claim ending with the judgment now challenged on appeal.

I have considered the material placed before me. Some of the matters addressed by the parties touch on the grounds of appeal that appear in the Memorandum of Appeal on record. There are serious issues to be argued when the appeal comes up for hearing and therefore, I will restrict myself to the prayer of stay of execution so that the rest of the issues are handled by the court that shall be seized of the appeal when it comes up for hearing.

The argument that the appellant should pay the balance of the decretal sum over and above Kshs. 3,000,000/= reserved in the insurance policy is crucial and in the event stay of execution is not allowed, then substantial loss may result if the appeal succeeds.

On the question of prejudice, it is possible to ensure that the appeal is expedited so that if the appeal is not allowed the respondent enjoys the fruits of his judgment. The appellant has offered to post security which has not been seriously challenged.

Considering the totality of the material placed before me, I am inclined to exercise the court's discretion and order a stay of execution on condition that the appellant provides a bank guarantee for the balance of the decretal sum payable to the respondent within 30 days from the date of this ruling.

The costs shall be on appeal.

Dated, signed and delivered at Nairobi this 31st day of May, 2018.

A. MBOGHOLI MSAGHA

JUDGE