



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. 661 OF 2017**

**CARMAN ELECTRICS LIMITED.....APPELLANT**

**VERSUS**

**SAMUEL KAIGU NJAU.....RESPONDENT**

**RULING**

The lower court delivered Judgment in favour of the respondent on 14<sup>th</sup> November, 2017 holding that the appellant was 100% liable to the respondent and awarded Kshs. 600,000/= general damages, Kshs. 100,000/= future medical expenses, Kshs. 5,000/= doctor's attendance fee and Kshs. 1,500/= special damages.

The appellant was aggrieved by that decision and filed a Memorandum of Appeal on 30<sup>th</sup> November, 2017 disputing the finding on liability, future medical expenses and general damages. It is also the appellant's position that the respondent's suit was statute barred.

There is now before me an application by way of Notice of Motion dated 7<sup>th</sup> December, 2017 seeking an order of stay of execution pending the hearing of the appeal. It is brought under Section 3A of the Civil Procedure Act, Order 42 Rule 6 and Order 51 of the Civil Procedure Rules, based on the grounds set out on the face of the application and a supporting affidavit sworn by the Managing Director of the appellant.

The application is opposed and there is a replying affidavit sworn by the advocate for the respondent. Both parties have filed submissions and cited some authorities which I have considered. The application was filed timeously. The applicant is also ready to abide by any terms or conditions in terms of security that may be ordered by the court.

I have considered also that the respondent has a judgment in his favour which he desires to benefit from. I refer in particular to paragraph 15 of the replying affidavit where the respondent is ready to accept half of the decretal sum, and the balance be deposited in a joint interest earning account in the names of the advocates.

Considering the nature of the claim, that proposal is not unreasonable.

To meet the ends of justice, I allow the application for stay of execution on condition that the appellant pays the respondent a sum of Kshs. 300,000/=, and cause the balance of the decretal sum to be deposited in an interest earning account, in the names of both advocates within 30 days from the date of this ruling. The costs shall be in the appeal.

*Dated, signed and delivered at Nairobi this 29<sup>th</sup> day of May, 2018.*

**A. MBOGHOLI MSAGHA**

**JUDGE**