

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC APPLICATION NO. 239 OF 2017

BETH KANINI MBITHI.....1ST APPLICANT

GEORGE KAHURA.....2ND APPLICANT

VERSUS

ANN WANJIKU WAITHAKA AND PHASYPHICKS AKINYI OGUTU

Suing as the legal administrators of the estate of the late

HILLARY WAITHAKA NJOROGE.....RESPONDENT

RULING

This is an application by way of Notice of Motion dated 15th June, 2017 seeking an order of Stay of Execution of the Judgment of the lower court delivered on 3rd March, 2017. There is also a prayer for leave to appeal out of time. The grounds relied upon appear on the face of the application and there is also a supporting affidavit sworn by Pauline Waruhiu the claims director of Direct Line Assurance Company Limited who was the insurer of motor vehicle registration No.KBD 692N. The application is opposed and there is a replying affidavit sworn by the advocate for the respondent. Both parties have filed written submissions.

I have taken into consideration the material placed before me, and note that the applicants' main ground in seeking stay of execution is that the lower court awarded excessive damages to the respondent. The delay in filing the application has been sufficiently explained by the applicants and I need not address the issue.

It is true that the respondent has not provided any evidence of her financial standing but that should not be held against her. I say so because she has a valid judgment only that the applicants also have a right of appeal. I have also looked at the proposed memorandum of appeal filed alongside the application. The only observation I can make is that the applicant has an arguable appeal.

In earlier submissions the applicants had proposed to pay the sum of Kshs. 500,000/= in settlement of the claim. It is the respondent's submission that the applicants have withheld that commitment in this application.

The suit arose from a fatal accident but I do not have the benefit of reading the lower court judgment which has not been annexed. Doing the best with the material placed before me, I allow the application and grant leave to the applicants to file the appeal within 60 days from today.

There shall be a stay of execution on condition that the applicants pay the respondent a sum of Kshs. 500,000/= within 30 days from today and deposit the balance of the decretal sum in a joint interest earning account in the names of the advocates for the parties on record within the same period of 30 days. In default of the above conditions execution shall proceed. The costs of this application shall be on appeal.

Dated, signed and delivered at Nairobi this 21st Day of November, 2017

A. MBOGHOLI MSAGHA

JUDGE