



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL APPEAL NO. 229 OF 2016

BASCO PRODUCTS (K) LIMITED.....APPELLANT

- V E R S U S -

SARAH KARURA.....1ST RESPONDENT

JOHN NGUGI KANJA.....2ND RESPONDENT

MOSES KANJA CURU.....3RD RESPONDENT

RULING

1. Basco Products (K) Ltd, the applicant herein, took out the motion dated 11th May 2016 in which it prayed for the following orders *inter alia*:-

- 1. That this application be certified as urgent and heard ex parte in the first instance;***
- 2. That there be a temporary stay of execution of the decree and or order issued in Kiambu CMCC No. 155 of 2009 pending the hearing and determination of this application;***
- 3. That there be a stay of execution of the decree and or order issued in Kiambu CMCC No. 155 of 2009 pending hearing and determination of the appeal;***
- 4. That costs of this application be provided for.***

2) The motion is supported by the affidavit of Jackson Orwenga.

When served, Sarah Karura and John Ngugi Kanja the respondent herein, filed the replying affidavit Sarah Karura to resist the motion.

3) When the motion came up for interparties hearing parties recorded a consent order to have the motion disposed of by written submissions. I have considered the grounds stated on the face of the motion plus the facts deponed in the affidavits filed in support and against the application. I have also taken into account the rival submissions. When determining an application for stay of execution pending appeal, the principles to be considered are well settled. It suffices to consider the principles stated under Order 42 Rule 2(2) of the Civil Procedure Rules. The first principle is that an applicant must show that he/she would suffer substantial loss if the order for stay is denied. Secondly, the application for stay must be filed without unreasonable delay. Thirdly, that the court must take into account the kind of security to be

provided for the due performance of the decree.

4) The appellant/applicant herein has urged this court to grant the order for stay pending appeal. Before considering the substance of the motion let me set out the background of the motion. On 23rd day of June 2008, Moses Kanja Curu, deceased, was fatally injured in a road traffic accident involving motor vehicle registration no. KAM 299C. The respondents herein upon obtaining limited letters of administration ad litem filed a compensatory suit against the appellant/applicant and one Hashim Barbeque. The suit was heard before the chief magistrate's court. Judgement was eventually delivered in favour of the respondents in the sum of ksh.243,900/= being both special and general damages. The appellant being dissatisfied preferred this appeal. The appellant/applicant has now taken out the motion dated 11th May 2016, the subject matter of this ruling seeking for stay pending appeal.

5) It is the submission of the appellant/applicant that if the order for stay is denied, it will suffer substantial loss in that there is no evidence that the respondents are in a position to refund the decretal sum when required upon the success of the appeal. The respondents did not controvert the assertion that they are not in a position to refund the decretal sum if the same is paid to them. In fact the respondents have suggested that if This court is inclined to grant the order then it should impose conditions. suffer substantial loss if the order is denied.

6) I am also satisfied that the application for stay of execution pending appeal was filed without unreasonable delay. In the end I allow the motion by granting the order for sty pending appeal on condition that the Appellant/ Applicant deposits the decretal sum of Kshs 243,900/= in an interest earning account in the joint names of learned counsels and or the firms of the advocates within 30 days. In default the motion will be treated as having been dismissed.

7) Costs of the motion to abide the outcome of the appeal

Dated, Signed and Delivered in open court this 20th day of December, 2016.

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent