



**REPUBLIC OF KENYA**

**AT THE HIGH COURT OF KENYA AT MOMBASA**

**CIVIL APPEAL SUIT NO. 24 OF 2015**

**KENJAP MOTORS LIMITED.....1ST APPELLANT**

**DAVID MBURU .....2ND APPELLANT**

**VERSUS**

**GEOFFREY KABIRU NDUNDA.....RESPONDENT**

**AND**

**REPUBLIC OF KENYA**

**AT THE HIGH COURT OF KENYA AT MOMBASA**

**CIVIL APPEAL SUIT NO. 25 OF 2015**

**KENJAP MOTORS LIMITED.....1ST APPELLANT**

**DAVID MBURU .....2ND APPELLANT**

**VERSUS**

**HELLEN MBINYA MUNYOLI.....RESPONDENT**

**AND**

**REPUBLIC OF KENYA**

**AT THE HIGH COURT OF KENYA AT MOMBASA**

**CIVIL APPEAL SUIT NO. 26 OF 2015**

**KENJAP MOTORS LIMITED.....1ST APPELLANT**

**DAVID MBURU .....2ND APPELLANT**

**VERSUS**

**RULING ON NOTICE OF MOTION DATED 17th APRIL 2015.**

1. An appeal has been filed by the appellants in the aforementioned appeals against the judgment of the lower court delivered on 4th February 2015. All the respondent's claims before the lower court were for damages for injuries suffered in motor vehicle accident which was being driven by the 2nd appellant while driving a motor vehicle registered in the name of the 1st appellant. Judgment was entered in favour of all the respondents by the magistrate's court.

2. The appellants were unsuccessful in their application for stay of execution pending appeal filed before the lower court. They have now filed another application for stay pending their appeals before this court on the three files titled above all dated 17th April 2015. These are the applications under consideration and this Ruling relates to all of them.

3. When the applications came for hearing the learned counsels recorded consent that the appellants do provide security as a condition for stay pending appeal and that the court do determine the amount of such security, and that the court do make an order on the payment of the auctioneers fees. This Ruling addresses that consent.

4. The appellants failed to avail to this court the lower court's decrees. It therefore is not clear the amount of the judgments of the lower court. One can only gather that information from the auctioneer's proclamations attached to the applications. In the case of HCCA No. 24 of 2015 the amount is reflected in the proclamation as KSH 7761,393.80; and HCCA NO.25 of 2015 the amount is KSH 786,643.80; and HCCA No. 26 of 2015 is reflecte4d as 761,393.80.

5. The appellants failed to submit on whether they would suffer any prejudice if they were ordered to provide the amount decreed by the lower court as security. Indeed the appellants deponed as follows in their affidavit in support of the applications:-

***“That I verily believe that I have a strong and meritorious appeal herein with very high chances of success. That the appellants is ( sic) willing to give security for the due performance of the decreed herein as shall be directed by this honourable court pending the hearing and final determination of the appeal.”***

6. In view of the above positions the order that commends itself to me and shall be the order of this court, is that the decretal sum in respect of each appeal be deposited in an interest earning account in the joint names of the advocate therein pending appeal.

7. In respect of the auctioneer's fees the order of the court is that the appellants shall pay the same. The basis of making that order is that although judgment was entered in favour of the respondents against the appellants in February 2015, the appellants did not seek stay pending appeal until April 2015. They must therefore bear the consequences of their indolence.

It is so ordered.

**MARY KASANGO**

**JUDGE**

**DATED AND DELIVERED AT MOMBAS THIS 28TH DAY OF MAY 2015.**

28th May 2015

Coram

Before Hon. Justice Mary Kasango

C/Assistance – Kavuku

Present:

For Appellants

For Respondent

Court Ruling delivered in their presence/absence in open court.

**MARY KASANGO**

**JUDGE**