



**REPUBLIC OF KENYA**

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

**CIVIL SUIT NO. 164 OF 2012**

**DOMINIC B. ONYANGO KONDITI..... PLAINTIFF**

**VERSUS**

**ABSON MOTORS LIMITED..... DEFENDANT**

**RULING**

1. The Defendant/Applicant herein, took out the motion dated 22<sup>nd</sup> October 2015 in which it sought for an order for stay of execution of this court's decree pending appeal. The motion is supported by the affidavit of Abdul Hakim. When served the Plaintiff/Respondent filed grounds of opposition to oppose the motion.
2. I have considered the oral submissions made by learned counsels. I have also considered the grounds set out on the face of the motion plus the facts deponed in the supporting affidavit and the grounds of opposition. It is not in dispute that on 25<sup>th</sup> September 2015, this court entered judgement in the sum of kshs. 14 million plus in favour of the Plaintiff and against the Defendant. Being dissatisfied, the Defendant filed a notice of appeal to intimate his intention to challenge the decision in the Court of Appeal. The Defendant has now beseeched this court to grant the order for stay pending appeal.
3. The Defendant pointed out that if the decretal sum is paid to the Plaintiff, the possibility of recovering the same is nil. The Plaintiff argued that the Defendant has not shown the substantial loss he would suffer if the order for stay is denied. An application for stay pending is determined by considering two main principles. First, an Applicant must show the substantial loss it would suffer if the order is denied. In this case, the Defendant has averred that the Plaintiff will not be in a position to refund the money if the decretal sum is paid. The Plaintiff did not deem fit to answer this very important ground. Since the Defendant/ Applicant has not controverted the Defendant's averment, I am satisfied that the Defendant has shown the substantial loss it would suffer.
4. The second ground is in respect of the question of security. The Defendant has proposed that since motor vehicle registration no. KBF 011 plus the log book, are in possession of the Plaintiff, the same should act as security for the due performance of the decree. Again, the Plaintiff/Defendant did not file an affidavit to controvert the Plaintiff's assertion. The Plaintiff proposed to this court to grant the order for stay on condition that the decretal sum of kshs.16,000,000/= be deposited as security for the due performance of the decree.
5. After carefully weighing the divergent arguments, I am satisfied that the proposal by the Defendant on the security for the due performance is reasonable.
6. In the end, I grant the Defendant an order for stay pending appeal on condition that truck registration no. KBF 011F shall act as security for the due performance of the decree.
7. Costs of the motion to abide the outcome of the appeal.

**Dated, Signed and Delivered in open court this 20<sup>th</sup> day of November, 2015.**

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

.....for the Defendant