



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**CIVIL APPEAL NO. 136 OF 2014**

*(Being an appeal from the Judgment and Orders of the Chief Magistrate's Court at Machakos by the Hon. Ag. SPM Patrick Wangige dated 19<sup>th</sup> June, 2014 in CMCC No. 496 of 2012)*

JAMES MULANDI.....1<sup>ST</sup> APPELLANT

LOCHAB BROS LIMITED.....2<sup>ND</sup> APPELLANT

VERSUS

**PETRONILA NGINA MAKAU** (*suing as the Legal Representative*

*of the estate of JAPHETH MWENDWA MAKAU (DECEASED)*).....RESPONDENT

**RULING**

1. The application dated 30<sup>th</sup> July, 2014 seeks orders that there be a stay of execution of the Judgment and decree issued on the 19<sup>th</sup> June, 2014 pending the hearing and determination of the Appeal.
2. It is stated in the affidavit in support that the judgment of the lower court was delivered on the 19<sup>th</sup> June, 2014 and the Respondent awarded Ksh 2,791,795/= plus costs and interest. The Applicants filed the appeal herein against the said judgment. The Applicant is apprehensive that the Respondents may take out execution proceedings. The Applicants complaint is that the award of General Damages is excessive. It is averred that the appeal is arguable and has high chances of success. The Applicants state that they are willing to abide with practical terms and conditions set by the court.
3. The application is not opposed. According to the replying affidavit sworn by the Respondent they are agreeable to the release of 80% of the decretal sum of Ksh 2,233,436/= plus the Advocates costs. The Respondent has proposed that the 20% balance be deposited in an interest earning bank account in the joint names of the Advocates for both parties to be opened at CFC Stanbic Bank Limited, Harambee Avenue.
4. **Order 42 rule 6(2) of the Civil Procedure Rules 2010 –**

***“(2) No order for stay of execution shall be made under subrule (1) unless –***

- a. ***the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and***
- b. ***such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”***

5. The application for stay is not opposed, subject to the proposals made by the Respondent. It is apparent from the application that the appeal is on quantum only. It is therefore not necessary to lock out the Respondent from the earlier decretal sum. To balance the interests of both parties, I allow the application on condition that 50% of the judgment amount is released to the Respondent and the balance deposited in court or in a joint interest earning bank account of the Advocates for the parties herein within 45 days from the date hereof pending the hearing and determination of the appeal.

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**B. THURANIRA JADEN**

**Dated and delivered** at Machakos this 10<sup>th</sup> day of December, **2015**

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**B. THURANIRA JADEN**

**JUDGE**