



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL APPEAL NO. 156 OF 2012

JOSHUA NJOROGE 1ST APPELLANT

VERSUS

MWANASHA HASSAN BAKARI 1ST RESPONDENT

ANNE MARIE SCHYDER ALIAS

WIRZ ANNE MARIE 2ND RESPONDENT

RULING

The Notice of Motion application dated the 25th day of September, 2012 and which is expressed to be brought under Section 3 and Section 3A of the Civil Procedure Act, order 42 rules 6, order 51 rules 1 and 3 of the Civil Procedure Rules seeks the following orders:-

1. ***A stay of execution of the Judgment obtained herein pending the hearing and determination of the present application.***
2. ***A stay of execution of the Judgment obtained herein pending the hearing and determination of the applicants appeal against the Judgment delivered on the 15th day of August, 2012.***

The grounds are that:-

(a) Judgment was delivered on 15th August, 2012 in favour of the Plaintiff against the Defendant and the thirty (30) days of stay of execution lapsed on 15th September, 2012.

(b) That unless the stay of execution is granted, the applicant is at a risk of execution and the applicants appeal would be rendered nugatory and they would suffer irreparable loss and damage.

(c) That the appeal has high chances of success.

(d) That the Defendant applicant is ready and willing and able to furnish such reasonable security and comply with any Court order that the Court may deem fit.

(e) That the application will not occasion prejudice to the Respondent.

(f) That the application has been done without unreasonable delay.

On the 15th day of August, 2012 Judgment was entered in favour of the plaintiff and against the Defendant on liability.

The plaintiff was to shoulder 30% and the Defendants 70%. Being aggrieved by that decision the Appellants have lodged an appeal.

The application for stay of execution was brought before the Court on 27th September, 2012 some forty (40) days after the lower Courts Judgment.

It cannot be said that there was unreasonable delay.

A memorandum of appeal (which is marked Annexure MK 1) is shown to have been filed on 14th September, 2012.

I am satisfied that if the stay is not granted the applicants appeal would be rendered nugatory. The applicant is willing to furnish security.

I find that the application has merit and stay of execution is granted pending hearing and determination of the appeal on the condition that the applicants deposit Ksh. 1 million in an interest earning account in the joint names of Counsel for the applicants and the Respondents within forty five (45) days from today.

Costs of this application to be Costs in the intended appeal.

Ruling delivered dated and signed this **18th** day of **June, 2014**.

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M. MUYA

JUDGE

18TH JUNE, 2014

In the presence of:-

Miss Kagumi for the applicants