

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL APPEAL NO. 123 OF 2007

PETER K AYIRO.....APPELLANT

VERSUS

MASH BUS SERVICES.....RESPONDENT

RULING

1. The Appellant succeeded in this appeal. By judgment dated and delivered on 23rd December 2010 (Sitati, J) his appeal was allowed; the order of the lower court dismissing his suit was set aside and judgment in his favour substituted in the total sum of KShs. 604,700/00 plus costs and interest.
2. When the Appellant moved by execution proceedings to realize his decree, the Court (Ang'awa, J) on 23rd November 2011 granted stay of execution in light of stay orders issued in **Nairobi HCCC No. 465 of 2011 (O.S.)**. Those orders had been granted under the **Insurance Act** following the declaration of a moratorium by the statutory manager of the insurance company that had insured the motor vehicles in various cases that had arisen out of road accidents.
3. The Appellant herein subsequently appealed in the said case (HCCC No. 465 of 2011 - O.S.) to set aside the said order in so far as it affected his case. By a ruling dated 11th December 2012 (Odunga, J) the application was allowed and the order set aside in so far as it affected the Appellant's rights in his present case.
4. The only impediment remaining therefore between the Appellant and the realization of his decree is the stay of execution herein granted on 23rd November 2011. He has applied to set that stay aside by **notice of motion dated 21st December 2012**. That application is the subject of this ruling.
5. Despite opposition by the Respondent vide replying affidavit filed on 28th February 2013, the application must succeed in law and in justice. With the ruling of 11th December 2012 in HCCC No. 465 of 2011 – O.S. there is no longer any legal basis for the stay of execution granted on 23rd November 2011. There is thus no justifiable reason to maintain the stay.
6. I will in the circumstances allow the application with costs. The stay of execution of decree granted herein on 23rd November 2011 is hereby set aside. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 20TH DAY OF SEPTEMBER 2013

H. P. G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 20TH DAY OF SEPTEMBER 2013

