



REPUBLIC OF KENYA
IN THE HIGH COURT
AT BUNGOMA
CIVIL APPEAL NO.129 OF 2009

(Appeal from Senior Principal Magistrate Hon. K. Ngomo in Bungoma Court in Civil Case no.552 of 2004)

IMA HAULIERS LIMITED.....APPELLANT

VS

MOHAMMED NYONGESA MURENDE.....DEFENDANT

RULING

The Respondent is the Appellant's driver for many years. On 28/9/2003 he was driving the Appellant's tractor registration number KUV 745 make Cameco which he was using to load sugarcane in a farm within Imanga sub-location. The gears failed as a result of which the tractor lost control, went downhill and rolled. He was injured in the process and sued the Appellant to recover general and special damages. He blamed the Appellant in negligence. The subordinate court at Bungoma found the Appellant 100% liable and awarded Ksh.250,000/= general damages, Ksh.18,500/= special damages and costs and interest to the Respondent. The Appellant was dissatisfied and appealed to this court. The appeal was dismissed with costs. On 17/6/2011 a notice to appeal to the Court of Appeal was filed and on 25/7/2011 the present motion was filed for stay of execution of the judgment of this court which was delivered on 6/6/2011. This is pending the hearing and determination of the intended appeal.

The judgment of this court that was delivered on 6/6/2011 dismissed the Appellant's appeal with costs. This was a negative order. What is sought to be stayed is only the order for costs. Stay cannot be granted because, if the appeal succeeds, the Appellant would be refunded its costs. **(Francis Kabaa v. Nancy Wambui and Another, Civil Application no.Nai 298 of 1996).**

Assuming that what is sought to be stayed is the execution of the decree issued by the subordinate court, it should be noted that this is a money decree. The amount in question is not colossal. The Respondent is still in the employment of the Appellant and earns Ksh.19,000/= monthly and is pensionable. It was pleaded that the employment is the only source of income for the Respondent. The Respondent stated that he has land and other assets that can be sold to realize the decretal sum. That was not countered by further evidence. I find that he is not a man of straw.

It should be remembered that in dealing with this kind of application, the court has two competing interests to bear in mind. The Appellant is appealing and the appeal should not be rendered nugatory, whereas the Respondent has a judgment whose fruits he should be entitled to benefit from.

I dismiss the application with costs.

Dated, signed and delivered in open court this 8th day of May, 2012.

A. O. MUCHELULE

JUDGE