



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Appeal 221 of 2012

Editorial Summary

1. *Civil Appeal*
2. *Civil Practice and Procedure*
3. *Subject of Subordinate Court Case*

TORT

3.1 *Material loss claim*

3.2 *Motor vehicle collision between two vehicles*

KVQ 135 owned by original plaintiff/respondent

KAE 108K owned by original defendant/appellant

3.3 *Judgment entered by Hon. Magistrate in favour of*

Respondent original plaintiff.

Pre-accident value

Ksh. 275,000/-

Surcharge

Ksh. 65,000/-

Ksh. 340,000/-

Assessors

Ksh. 2,500/-

Total

Ksh. 342,500/-

3.4 *Appeal filed 4th May 2012*

4. *Application for stay of execution*

31st May 2012 filed 6th June 2012

4.1 *Calculation of pre-accident value and
surcharge incorrectly calculated.*

4.2 Respondent concedes and prays difference
be paid to the respondent – a man of
means – owns a Mercedes Benz vehicle.

4.3 Applicant upon fulfilling requirements
asks moneys not to be paid to the
applicant.

5. Held:

- i) Applicatin granted.
- ii) Stay of execution subject to deposit of
Ksh. 210,000 plus interest.

6. Case Law:

Nandwa – Vs – Kenya Kazi Ltd
(1988) KLR 488

7. Advocates :

- i) *M/s D.M. Wambua instructed by B. Mbai & Co Advocates for
appellant/original defendant*
- ii) *M/s C.N. Kihara instructed by C.N. Kihara & Co Advoctes
for respondent/original plaintiff*

**D.T. DOBIE CO. LTD APPELLANT/ ORIGINAL
DEFENDANT**

VERSUS

**ANTHONY GITHUA KARIUKI RESPONDENT/ ORIGINAL
PLAINTIFF**

*(Being an appeal from the judgment and decree of Hon. Ole Keiwua (Mr) Principal Magistrate in
Milimani CMCC No. EJ. 88 of 2000 delivered on*

13th April 2012)

RULING

Application for Stay of Execution

Filed on 16th June 2012 dated 31st May 2012

I. INTRODUCTION

1. The parties herein litigated their case in the subordinate courts Milimani Commercial Court Nairobi. The dispute arose in TORT, on the 8th February 1997. A motor vehicle collision occurred between two vehicles registration KVVQ 135 owned by the respondent original plaintiff and KAE 108K owned by the appelland original defendant.

2. The trial Hon. Magistrate found the appelland original defendant is liable and entered judgment in favour of the respondent original plaintiff on the following terms:

That:

Pre-accident value of the damaged motor vehicle Ksh. 275,000/-

Add salvage Ksh. 65,000/-

Ksh. 340,000/-

Add assessors for Ksh. Ksh. 2,500/-

Total Ksh. 342,500/-

3. Being dissatisfied with this judgment the respondent appealed to this High Court on the 4th May 2012.

4. On the 6th June 2012, the respondent/applicant prayed in an application of the same date that they be granted leave to file stay of execution pending the main appeal. The grounds inter alia being that the salvage value of the motor vehicle was added to the value of the motor vehicle instead of being subtracted.

5. The respondent, agreed to this, that the Hon. Magistrate erred by adding the salvage value instead of deducting the said sum.

Nonetheless he prayed that the said salvage sum be deducted and the difference be paid to the respondent, who is a man of means. He owns a Mercedes Benz and was a man of substance.

6. This was opposed by the applicant. That the parties had failed to agree before.

II FINDINGS

7. The application had been brought without undue delay. That the appeal would be rendered nugatory and or substantial would occasion was raised by the appelland/applicant.

8. Whereas issues herein of an error apparent on the face of the record of judgment has been raised and conceded, should the respondent be paid the difference? This was opposed by the applicant on grounds that the issue of liability was being contested. The respondent argued that the appelland never attended court and thus liable for the accident.

9. This court in its discretion finds that the main appeal raises issues that upon consideration may or may not come up with the contrary opinion from the trial court. The parties wish to be heard.

10. It is hereby held on this application that the prayer for stay of execution be granted pending the hearing of the main appeal.

11. That the sum of Ksh. 210,000/- plus interest at court's rates be deposited in an interest earning account in the joint names of both advocates, alternative a banker's guarantee be provided by the applicant on the sum of Ksh. 210,000/- plus interest at court's rates pending the hearing of the appeal.

12. The costs be in the appeal.

DATED THIS 25TH DAY OF JUNE 2012 AT NAIROBI

M.A. ANG'AWA

JUDGE

Advocates:

- i) *M/s D.M. Wambua instructed by B. Mbai & Co Advocates for appellant/original defendant*
- ii) *M/s C.N. Kihara instructed by C.N. Kihara & Co Advocates for respondent/original plaintiff*