



Editorial Summary

1. *Civil Appeal*
2. *Civil Practice and Procedure*
3. *Subject of Subordinate court case*

TORT

- 3.1 *Running down cause.*
- 3.2 *Passenger/female adult*
- 3.3 *Trial court enters judgment in favour of original plaintiff*
- 3.4 *Original 3rd defendant Anthony Muikia Gichuru files appeal on issue of liability only on 19th July 2011.*
- 3.5 *Prays for stay of execution of the magistrate's judgment.*

4. *Application for stay of execution:*

Notice of Motion 14th November 2011

- 4.1 *Appellant not liable for accident.*
- 4.2 *Would suffer irreparable loss if execution is carried out.*

5. *In reply:*

- 5.1 *Half the decretal sum be paid to respondent Original plaintiff pending appeal.*
- 5.2 *Money decree*

6. *Held:*

Application for stay of execution

granted.

7. *Case Law:*

8. *Advocates :*

i) *R.M. Kioko instructed by M/s Ndonge & Co Advocates for
appellant/original 3rd defendant*

ii) *J.N. Abuga instructed by J N Abuga & Co Advocates for 1st respondent/original
plaintiff*

iii) *Wanjiku Nduati instructed by Wanjiku Maina & Co Advocates for 2nd
respondent/original 2nd defendant*

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

CIVIL APPEAL NO. 337 OF 2011

ANTHONY MUIKIA GICHURU APPELLANT/

ORIGINAL 3RD DEFENDANT

VERSUS

IRENE WANJIKU KAHUNYO..... RESPONDENT/

ORIGINAL PLAINTIFF

MAXWELL KIMACHUI RESPONDENT/

ORIGINAL 1ST DEFENDANT

PETER NGUGI NJERU RESPONDENT/

ORIGINAL 2ND DEFENDANT

*(Being an appeal from the judgment of Hon. I. Ireri (RM) delivered on 21st June 2011 in CMCC 305/09
at Limuru Court)*

R U L I N G

Application for Stay of Execution

Dated 14th November 2011

I. **INTRODUCTION**

1. The original suit before the subordinate court arises out of TORT. A motor vehicle accident occurred in which Irene Wanjiku Kahunyo, a female adult was a fare paying passenger.
2. The Hon. Trial Magistrate court at Limuru awarded her damages as compensation; against the appellant/original 3rd defendant and the applicant herein together with two other respondents original defendant 1 & 2.
3. Being aggrieved, the appellant original 3rd defendant filed appeal to this High Court on 19th July 2011. By an application dated 14th November 2011, he prayed for stay of execution of the subordinate court's judgment.

II APPLICATION 14TH NOVEMBER 2011

4. This application for stay of execution was brought after a previous order of stay of execution of 30 days had been issued by the subordinate courts.
5. It sought stay pending appeal. There has been a four months wait between the time of filing appeal. The applicant explained that this was due to the advocate attempting to review the application at the magistrate's court but found the original file was not available.
6. In his submissions, he stated that the only issue that would be taken up is that of liability. The Hon. Trial Magistrate erred as such he should never have been found liable for the accident and at all.
7. This means if the appellate court upholds his argument on appeal, then he would not pay the decretal sum at all.
8. The application was opposed. The original plaintiff respondent No. 1 in this appeal prays that the half of the decretal sum be paid to her pending appeal. The balance be deposited in an interest earning account in the joint names of the advocate.
9. The compliance of or not, Order 1 r 21 Civil Procedure Rules was considered by the trial court and taken into account. The appellant is liable to pay the decretal sum with others.
10. The application before this court for stay of execution pending appeal has merits. The issue of liability is a matter sought to be appealed against. If the appellant is successful he would suffer loss.
11. The other respondents were not in court due to the issue of their insurance company which is under a moratorium.
12. I would grant the application for stay of execution. I order that the decretal sum be deposited in the joint interest earning account in the names of the two advocates. That in default of so doing within 30 days, the decretal sum be deposited to court.

DATED THIS 26TH DAY OF MARCH 2011 AT NAIROBI

M.A. ANG'AWA
JUDGE

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Advocates :

- i) *R.M. Kioko instructed by M/s Ndonye & Co Advocates for
appellant/original 3rd defendant*

ii) *J.N. Abuga instructed by J N Abuga & Co Advocates for*

1st respondent/original plaintiff

iii) *Wanjiku Nduati instructed by Wanjiku Maina & Co Advocates for*

2nd respondent/original 2nd defendant