



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CIVIL APPEAL NO. 47 OF 2011

JEREMIAH

KARANI.....APPELLANT/APPLICANT

VERSUS

**SABASTIAN NDARANGA JAMES.....
.....RESPONDENT**

R U L I N G

There was an accident in which motor vehicles registration numbers KAE 100T and KAA 548V collided as a result of which the Respondent was injured. He sued the Applicant in general and special damages, claiming the Respondent was the legal administrator of the deceased owner of KAA 548V that had caused the accident. The subordinate court found for the Respondent and awarded him KShs.650,000/= in general damages, KShs.200/= special damages, plus costs and interest. The applicant was aggrieved by the decision and has appealed to this court on liability. On 10th May 2011 he applied under Order 42 rule 6 of the Civil Procedure Rules for the stay of the execution of the decree that had been issued against him in the sum of KShs.737,930/= pending the hearing and determination of the appeal. The process of execution had commenced and motor vehicle registration number KAA 548V attached. The application was under Certificate of Urgency and went before Justice Dulu on the same day. He certified the matter as urgent and granted an interim stay on condition that the Applicant deposits KShs.400,000/= into court within 7 days to enable the application to be heard inter partes on 23rd May, 2011.

It is clear that the Applicant has not made the deposit and this is why on 14th July he filed the present application seeking the extension of time within which to comply. His reasons for not complying are that he is not a man of means except for his reliance on this vehicle for livelihood. He stated that he takes care of his 3 young brothers and 2 sisters since his parents have passed on. He seeks that he be granted 14 days within which to make the deposit.

As was expected, the application was opposed by the Respondent whose case was that the Applicant was guilty of inordinate delay in making the deposit. Further, that the execution process was already under way.

It is unusual for a court to grant stay of execution in a monetary decree unless there are special circumstances, the fact that the amount payable under the decree is substantial and that the Respondent

has no known assets within the jurisdiction of the court from which the Applicant can recoup in the event that the appeal is successful. (**SINGH VS RUNDA ESTATE LTD [1960] EA 263**).

In my view, the Applicant was lucky to be granted the order at the ex parte stage. The unfortunate thing is that about 2 months later he has not deposited the ordered security. He may be having financial problems but has to be mindful of the fact that the Respondent has a hard won judgment which he is entitled to execute. It would have been different had the Applicant deposited even a fraction of the amount ordered. The discretion of the court cannot be exercised to favour a party who has not obeyed an order granted to him under a Certificate of Urgency and ex parte.

The result is that the application is dismissed with costs.

DELIVERED, DATED AND SIGNED AT EMBU THIS 21ST DAY OF JUNE, 2011.

**A. O. MUCHELULE
JUDGE**

In the presence of:- Mr. Mogusu for the Respondent, Mr. Kariuki for the Applicant.