



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 2699 OF 1991**

**ALICE WANDIA MALOMBE.....PLAINTIFF**

**-VERSUS**

**SHEIKHAN SALIM ZEIN**

**T/A EASTERN EXPRESS & MUSANGO.....DEFENDANTS**

**RULING**

By way of a Notice of Motion dated the 14th March, 2000 the Applicant is asking for the following orders:

- (1) That there be a Stay of Execution pending the hearing and determination of this application.
- (2) That there be a Stay of Execution of the Judgment delivered on 6th March, 2000 pending the hearing and the final determination of the appeal herein.
- (3) The costs of the application are in course.

The accident which gave rise to the judgment in question took place on 4th may, 1990. The accident was fatal and the two drivers died in the accident.

The Judgment was not delivered until March 2000 nearly 10 years after the accident. The applicant's case is that the applicants have a meritorious appeal with an overwhelming chance of success and that the applicants are bound to suffer substantial and irreparable loss unless the orders sought are granted.

The application is supported by an affidavit of Samuel Kamunye Gichigi, which amplifies the grounds in support of the application. Basically the Applicant is taking issues with the finding on liability and on the fact that the Learned Judge allowed the suit to proceed when there were no Letters of Administration taken out of the time the suit was filed. These two form the gist of the intended appeal and on these the applicant contents that the appeal has great chances of success. The Judgment by Justice Osiemo does not bear out this contention.

The two issues raised were adequately addressed to by the Learned Judge in his Judgment and without appearing to act as an appellate court, I find that far from what the applicant contents there are no overwhelming chances of success in the intended appeal.

The Judgment ordered to pay the plaintiff a sum of Shs.276,660 and this is the amount the applicant claims that it will suffer irreparable and substantive damage if no stay is granted.

The applicant does not show how it will suffer the irreparable damage considering that the amount awarded is a small amount. There was no evidence for example that the respondent would not be able to refund this money in case the appeal is eventually successful.

Taking into account that the suit took almost 10 years to be heard it does not make sense. That there should be a Stay based on these grounds, I find it irresistible to come to the conclusion that the respondents objective is to borrow more time through the intended appeal to delay and payment ordered by the court despite the small amount it is. Fairness and justice must be for both parties to the suit and

justice dictates that the Respondent/Plaintiff be allowed to realize her judgment. Since the applicant did not show that the Plaintiff was such a pauper as not to be able to repay this money if the appeal is allowed.

I find the application without merit and it is refused with costs to the Respondent.

**Delivered and dated at Nairobi this 3rd day of August, 2000.**

**KASANGA MULWA**

**JUDGE**