



REPUBLIC OF KENYA



KENYA LAW
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Kamuya v EM (Minor suing thro' mother & next friend ENN) (Civil Appeal E022 of 2025) [2025] KEHC 4330 (KLR) (3 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4330 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CIVIL APPEAL E022 OF 2025**

EN MAINA, J

APRIL 3, 2025

BETWEEN

STEVE SUMBI KAMUYA APPELLANT

AND

EM (MINOR SUING THRO' MOTHER & NEXT FRIEND ENN) RESPONDENT

RULING

1. This ruling relates to the Appellant/Applicant's Notice of Motion dated 10th February, 2025. The motion seeks a stay of execution of the decree of the Small Claims Court arising from the Judgment delivered on 9th January, 2024 in SCCC No. E530 of 2024 pending hearing and determination of this appeal.
2. The application was opposed through a replying affidavit sworn by the Respondent on 18th February, 2025 where she deposes that the Appellant/Applicant is unlikely to suffer substantial loss as she is capable of refunding the money should she be paid and the appeal succeeds. She also deposes that the Appellant/Applicant was indolent in bringing the appeal as he only did so after the stay granted by the lower court expired.
3. Learned Counsel for the parties agreed to canvass the application by way of written submissions and the same were duly received.

Disposition

4. Stay of execution is governed by Order 42 Rule 6(1) & (2) of the *Civil Procedure Rules*. The main considerations are whether the Appellant/Applicant is likely to suffer substantial loss should the application be disallowed and the appeal succeeds; whether the application has been made timeously and whether the Applicant is willing to deposit such security as would be ordered by the court.



5. The Appellant seeks to stay execution of the decree of the Small Claims Court in E530 of 2024 pending appeal. The decree arises from a personal injury claim where a sum of Kshs.175,550/- was awarded to the Respondent.
6. I have carefully considered the application, the grounds on its face, the affidavits of the parties, the rival submissions and the law and I am satisfied that the applicant has prima facie demonstrated that he is likely to suffer substantial loss in that the Respondent is a minor who has no income and hence not in a position to refund the decretal sum were the appeal to succeed. Whereas the next friend deposes that she is a woman of means and hence capable of refunding the decretal sum she has not provided any evidence to demonstrate her means of income and moreover the fact that this is a money decree cannot per se disentitle the Applicant of a stay of execution. The Applicant has its memorandum of appeal raised the issue of the jurisdiction of the Small Claims Court to determine the claim and hence the appeal is arguable. It would therefore be remiss of this court to decline to grant the stay sought.
7. The Appellant/Applicant has also expressed willingness to abide by any conditions as to security as may be imposed by this court.
8. Accordingly, the application is allowed and a stay of execution pending appeal is granted on condition that the entire decretal sum shall within thirty (30) days of this ruling be deposited either in court or an interest earning account in the joint names of Counsel for the parties.
9. The Appellant/Applicant shall bear the costs of this application.

Orders accordingly.

RULING SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 3RD DAY OF APRIL, 2025.

E. N. MAINA

JUDGE

In the presence of:

Mr. Muthoka for Thoronjo for the Respondent

Mr. Kuria for the Appellant/Applicant

C/A: Geoffrey

