



**East Africa Institute of Certified Studies Ltd & another v Jackton (Civil Appeal E014 of 2023) [2024] KEHC 6919 (KLR) (21 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6919 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CIVIL APPEAL E014 OF 2023  
GMA DULU, J  
MAY 21, 2024**

**BETWEEN**

**EAST AFRICA INSTITUTE OF CERTIFIED STUDIES LTD ..... 1<sup>ST</sup> APPELLANT**

**SMART COACH LIMITED ..... 2<sup>ND</sup> APPELLANT**

**AND**

**ELIAS MBEU JACKTON ..... RESPONDENT**

**RULING**

1. Before me is an application by way of Notice of Motion dated 14<sup>th</sup> July 2023 filed by the applicant through counsel Kimondo Gachoka & Company Advocates under Section 1A, 1B, 3 and 3A, 79G and 95 of the *Civil Procedure Act* (Cap.21), and Order 22 rule 22, Order 42 rule 6, Order 50, and Order 51 rule 1 and 3 of the *Civil Procedure Rules* 2010.
2. The prayers in the application are as follows:-
  1. (Spent).
  2. (Spent).
  3. (Spent).
  4. That the court be pleased to stay execution and proceedings of the judgment from Voi Civil Suit No. E074 of 2022 pending the hearing and determination of the appeal herein.
  5. That costs of the application abide the outcome of the appeal.
3. The application has grounds on the face of the Notice of Motion that the applicant had filed an appeal, and that if the orders sought are not granted the applicant will suffer substantial loss and the appeal rendered nugatory.



4. The application was filed with a supporting affidavit sworn on 19<sup>th</sup> July 2023 by Nannungi Mariat Advocate for the applicant, which amplifies the grounds of the application.
5. The application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Kimondo Gachoka & Company Advocates for the applicant, as well as the submissions filed by Njoroge Mwangi & Company Advocates for the respondent.
6. This being an application for stay of execution of judgment or decree pending appeal, it is governed by the provisions of Order 42 Rule 6 of the *Civil Procedure Rules* especially Rule 6(2).
7. The first consideration in an application for stay of judgment or decree, is whether the applicant will suffer substantial loss if the stay orders sought are not granted. I note that this is a money decree arising from a road traffic accident.
8. General damages were awarded at Kshs. 700,000/= and special damages at Kshs. 11,500/= The grounds of appeal filed are on the quantum of damages awarded.
9. In my view, the applicant will suffer substantial loss only if the whole award is paid, and the respondent is unable to refund same if the appeal succeeds. Thus if stay is granted, in my view the applicant should pay part of the decretal amount.
10. Was the application filed without unreasonable delay? Judgment herein having been delivered on 20<sup>th</sup> April 2023, and the application filed in July 2023. I find no unreasonable delay in filing the application.
11. As for provision of security, the applicant has pleaded that they are willing to provide security as the court may order. In my view, the part payment of the decretal amount will be sufficient security.
12. Consequently, I allow the application and order as follows:-
  1. I grant stay of execution of judgment or decree herein as prayed pending determination of appeal.
  2. The stay orders above issued are subject to the appellant paying to the respondent through counsel part of the decretal amount Kshs. 300,000/= within 45 days from today.
  3. In default of (2) above, the stay orders herein granted will automatically lapse and be of no effect.
  4. The costs of this application will abide the decision in the appeal.

**DATED, SIGNED AND DELIVERED THIS 21<sup>ST</sup> DAY OF MAY 2024 IN OPEN COURT AT VOI VIRTUALLY.**

**GEORGE DULU**

**JUDGE**

In the presence of:-

Alfred/Trizah – Court Assistants

Mr. Nganga for applicant

Mr. Kazungu for respondent

