



**Michubu (Suing as the Legal Representative of the Estate of Agnes Kawira) v St John's of God Hospital Tigania (Civil Case E024 of 2021) [2024] KEHC 4735 (KLR) (2 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 4735 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CIVIL CASE E024 OF 2021  
TW CHERERE, J  
MAY 2, 2024**

**BETWEEN**

**JACKSON MICHUBU (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF AGNES KAWIRA) ..... PLAINTIFF**

**AND**

**ST JOHN'S OF GOD HOSPITAL TIGANIA ..... DEFENDANT**

**RULING**

1. By judgment dated 29<sup>th</sup> February, 2024, this court entered judgment for Jackson Michubu (Suing as The Legal Representative of The Estate of Agnes Kawira) (Plaintiff/Respondent) as against the St John's of God Hospital Tigania (Defendant/Applicant) for KES. 11,412,850/- (eleven million, four hundred twelve thousand, eight hundred fifty), costs of the suit and interest.
2. By summons dated 27<sup>th</sup> March, 2024, Defendant/Applicant seeks stay of the judgment and decree in this matter pending the hearing and determination of an intended appeal. The application is supported by an affidavit sworn by James Mwiti on 27<sup>th</sup> March, 2024. The deponent who describes himself as the Defendant/Applicant's administrator avers that the Defendant/Applicant is aggrieved by this court's judgment and intends to appeal. Defendant/Applicant has offered to pay the Plaintiff/Respondent 25% of the decretal sum and has offered a bank guarantee for the balance.
3. In opposing the Application, Plaintiff/Respondent in an affidavit sworn on 15<sup>th</sup> April, 2024 avers that he is entitled to enjoy the fruits of the judgment and prays that in the event the stay order is granted, Defendant/Applicant should pay ½ of the decretal sum and deposit the balance in an interest earning account in the name of both advocates.

**Analysis and Determination**

4. I have considered the notice of motion in the light of affidavits on record and submissions filed on behalf of Defendant/Applicant the Plaintiff/Respondent not having filed any and the issue for



determination is whether Defendant/Applicant has made a case for stay of execution of judgment in this case.

5. Order 42 (6) of the Civil Procedure Rules provides:

(2) 2) No order for stay of execution shall be made under sub rule

(1) Unless—

- a. The court is satisfied that substantial loss may result to the applicant unless the order is made
- b. That the application has been made without unreasonable delay; and
- c. Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.

6. The impugned judgment was delivered on 29<sup>th</sup> February, 2024. This application was filed on 28<sup>th</sup> March, 2024 exactly two months after the judgment and the application was therefore filed without unreasonable delay.

7. I have considered whether Applicant has demonstrated that it is likely to suffer substantial loss if stay of execution is not granted.

8. Substantial loss, in its various forms is the corner stone of best jurisdictions for granting a stay. That is what has to be presented. There is a myriad of cases on what constitutes substantial loss. In *Standard Assurance Co. Ltd V Alfred Mumea Komu* [2008] eKLR, the Court stated-

“Substantial loss, in its various forms is the corner stone of best jurisdictions for granting a stay. That is what has to be presented. Therefore, without this evidence, it is difficult to see why the respondents should be kept out of their money.”

9. In an application for stay pending appeal, an applicant should show the damages it would suffer if the order of stay is not granted since by granting stay would mean that the status quo should remain as it were before the judgement and that would be denying a successful litigant of the fruits of his judgement which should not be done if the applicant has not given to the court sufficient cause to enable it to exercise its discretion in granting the order of stay. (See *Kenya Shell Ltd v Kibiru & Another* [1986] KLR).

10. Whereas this is a money decree, there is no evidence that the Plaintiff/ Respondent is in a position to refund the decretal sum in the event that the appeal succeeds and that is persuasive evidence that Appellant is likely to suffer substantial loss if orders sought are not granted.

11. Security is a legal requirement under 42 (6) (2) (c) of the Civil Procedure Rules. The Appellants have offered to pay 25% to the Plaintiff/Respondent and to furnish a bank guarantee for due performance of the balance of the decretal sum.

12. Even though it is not my duty at this stage to determine if the Applicant has an arguable appeal, I am minded, in the interest of justice to exercise this court’s discretion under section 3A of the Act to afford the Defendant/Applicant an opportunity to prosecute its appeal.

13. In the end, the notice of motion dated 27<sup>th</sup> March, 2024 is allowed in the following terms:

1. There shall be a stay of execution of judgment in this case pending the hearing and determination of the intended appeal on condition that the Defendant/Applicant SHALL:



- a. Pay 25% of the decretal sum to the Plaintiff/Respondent within 30 days from today's date
- b. Deposit 25% of the decretal sum with the court within 30 days from today's date

**DELIVERED AT MERU THIS 02<sup>ND</sup> DAY OF MAY 2024**

**WAMAE.T. W. CHERERE**

**JUDGE**

Appearances

Court Assistants - Kinoti/Munene

For Plaintiff/Respondent - Mr. Ngunjiri for Ngunjiri Michael & Co. Advocates

For Defendant/Applicant – Mr. Njoroge for Nduati & Co. Advocates

