



**Muthomi & another v Karimi (Miscellaneous Civil Application
E007 of 2024) [2024] KEHC 7076 (KLR) (6 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7076 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS CIVIL APPLICATION E007 OF 2024**

TW CHERERE, J

JUNE 6, 2024

BETWEEN

SILAS MUTHOMI 1ST APPLICANT

MARY WANJIKU 2ND APPLICANT

AND

IRENE KARIMI RESPONDENT

RULING

1. On 21st September 2023, Judgment was entered in Meru SCC No E200 of 2023 for the Respondent as against the Applicant for the sum of Kshs 251,200/- plus costs and interest.
2. By application dated 15th January, 2024 and filed on 16th January, 2024, supported by an affidavit sworn by Jeremiah Mungania Maroo (Applicant) he seeks stay of execution of the judgment pending filing of an intended appeal on both quantum and liability and leave to appeal out of time. Applicant avers that his insurer is willing to offer a bank guarantee as security for due performance of the judgment.
3. Joelrum Mutisyia (Respondent) opposed the application vide a replying affidavit sworn on 25th March, 2024 on the grounds that the delay in filing the appeal has not been explained and substantial loss has not been demonstrated. In the event that application is allowed, Respondent prays that the total decretal sum deposited in an interest earning account in the name of both advocates.
4. I have considered the application in light of affidavits on record and the issue for determination is whether a case has been made for an order of leave to file an appeal out of time and stay of execution of judgment dated 17th October 2023 pending hearing and determination of the intended appeal.
5. Order 42 (6) of the *Civil Procedure Rules* provides that no order for stay of execution shall be made unless application has been made without unreasonable delay; substantial loss is demonstrated and



security for the due performance of such decree or order is offered. (See *Endmor Steel Millers Ltd v James Wakbulunya Makuto* [2016] eKLR).

6. The impugned judgment was delivered on judgment on 17th October 2023, this application was filed on 17th January, 2024 exactly 3 months from the date of the impugned judgment.
7. Applicant does not explain the delay in filing the appeal and appears to have moved the court only after the Respondent filed a declaratory suit to enforce the judgment against Appellant's insurer.
8. Concerning substantial loss, there is a myriad of cases among them *Standard Assurance Co. Ltd v Alfred Mumea Komu* [2008] eKLR where 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. Respondent has not responded to the Applicant's contention that he is not in a position to refund the decretal sum in the event the appeal succeeds.
10. From the foregoing, I find that Applicant has thus demonstrated that he is likely to suffer substantial loss if an order of stay is not granted.
11. The record demonstrates that Applicant has to date not deposited the sum of Kshs 100,000/- as security for due performance of the judgment which he was ordered to deposit on 17th January, 2024.
12. From the foregoing analysis, the notice of motion dated 15th January, 2024 and filed on 16th January, 2024 is allowed in the following terms;
 1. Leave is granted to appeal the judgment and decree in Meru SCC No E200 of 2023 An order of stay of execution of judgment and decree in Meru SCC No E200 of 2023 is granted pending the hearing and determination of the intended appeal on condition that Applicant deposits the total decretal sum with the court as security for due performance of the judgment
 2. The intended appeal shall be filed in the next 45 days
 3. Costs shall be costs in the appeal

DELIVERED IN MERU THIS 06TH DAY of JUNE 2024

T.W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Kinoti

For Applicant - Mr. Adagala for Kimondo & Gachoka & Co. Advocates

For Respondent - Mrs. Ntarangwi for Hiram Kirimi & Co. Advocates

