



**Mghanga v Said (Civil Appeal E018 of 2024) [2024] KEHC 6823 (KLR) (4 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6823 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CIVIL APPEAL E018 OF 2024  
GMA DULU, J  
JUNE 4, 2024**

**BETWEEN**

**BRIGHTONE MSENGETI MGHANGA ..... APPELLANT**

**AND**

**PHILIP JACKSON SAID ..... RESPONDENT**

**RULING**

1. Before me is an application by way of Notice of Motion dated March 13, 2024 filed through counsel Murimi, Mbago & Muchela Advocates under Order 42 Rule 6 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act (Cap.21).
2. The prayers in the application are as follows:-
  1. (Spent)
  2. (Spent)
  3. The court be pleased to stay the aforesaid judgment/decree pending the hearing and determination of the appeal herein.
  4. That costs of this application be provided for.
3. The application has grounds on the face of the Notice of Motion that if the judgment in Wundanyi CMCC No. E024 of 2022 is not stayed, the applicant will suffer substantial loss and the appeal herein rendered nugatory.
4. The application was filed with a supporting affidavit sworn on March 13, 2023 by Kevin Kitavi the Deputy Manager – Legal of MUA Insurance (K) Ltd, which amplifies the grounds of the application.
5. The application was opposed through a replying affidavit sworn on March 21, 2024 by Philip Jackson Mwandazi Said the respondent in which it was deponed that the supporting affidavit was sworn by



a stranger, and that if the stay orders sought are granted, then half of the decretal amount Kshs. 921,756/80 be released to the respondent through his advocate.

6. The application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Murimi, Mbago & Muchela Advocates for the applicant as well as the submissions filed by Njoroge Mwangi & Company Advocates for the respondent.
7. This being an application for stay of execution of decree or judgment pending appeal, it is governed by the provisions of Order 42 Rule 6 of the Civil Procedure Rules. In particular Rule 6(2) provides as follows:-
  - 6 (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 and the application has been made without unreasonable delay; and
    - b. 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.
8. This is a money decree arising from alleged acts of negligence relating to a motor traffic accident. The applicant's counsel has not disclosed the decretal amount, but the respondent claims that half of the decretal amount is Kshs. 921,756/80.
9. In my view, the applicant should have disclosed the decretal amount. I am also of the view that the applicant will suffer substantial loss only if the entire amount is paid to the respondent and is not recoverable in case the appeal succeeds, but not otherwise in view of the fact that the grounds of appeal herein are only on quantum of damages awarded.
10. Thus in considering grant of stay orders, I will have to order payment of part of the decretal amount, such an order in my view will be fair to all parties and otherwise, I find that the applicant will suffer substantial if the stay orders sought are not granted.
11. Was the application filed without unreasonable delay? Judgment herein was entered on February 29, 2024, and this application filed on March 13, 2024. In my view, there was no inordinate delay in filing this application.
12. On provision of security by the applicant, in my view payment of part of the decretal amount will be sufficient security.
13. For the above reasons, I allow the application and order as follows:-
  - i. I grant stay of execution of decree or judgment herein pending determination of appeal.
  - ii. The above stay order is granted subject to the applicant paying the respondent through counsel part of the decretal amount Kshs. 500,000/= within 45 days from today.
  - iii. In default of (ii) above, the stay orders herein granted will automatically lapse and be of no effect.
  - iv. Costs of this application will follow the determination of the appeal.

**DATED, SIGNED AND DELIVERED THIS 4<sup>TH</sup> DAY OF JUNE 2024 IN OPEN COURT AT VOI VIRTUALLY.**

**GEORGE DULU**  
**JUDGE**



In the presence of:-

Alfred/Trizah – Court Assistants

Ms. Atieno for the applicant

Mr. Kazungu for the respondent

