



**Auto Industries Ltd & 2 others v Amango (Civil Appeal
E424 of 2023) [2024] KEHC 10879 (KLR) (5 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 10879 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL E424 OF 2023
BK NJOROGE, J
JULY 5, 2024**

BETWEEN

AUTO INDUSTRIES LTD 1ST APPELLANT

JOHN MUNGAI 2ND APPELLANT

SERAH NJERI 3RD APPELLANT

AND

JACKSON AMANGO RESPONDENT

RULING

1. The Motion before the Court is dated 27th November 2023. It was filed under a Certificate of Urgency of even date. It seeks a stay of execution of the Judgment delivered on 26/10/2023 in Kikuyu CMCC No. E139 of 2022 *Jackson Amango v Auto Industries Ltd and 2 others*. That Suit is the subject of an Appeal to this Court.
2. The Motion is supported by the Affidavit of Hellen Owiti a Legal Manager of Ms. G. A. Insurance Company Limited sworn on 26/11/2023 and the attachments annexed therein.
3. The Motion is opposed by way of Replying Affidavit Sworn by Munyoki Muthangya on 8th January, 2024 with annexures.
4. The parties took directions for filing written submissions. All parties have complied by filling their written submissions with authorities attached. The Court has considered the submissions filed and the authorities referred to.

Issues for Consideration

5. This being an interlocutory application for stay of execution, the Court ought to consider whether the stay sought is merited. The Court also ought to consider the issue of costs.



Brief Background

6. The Appellants are aggrieved by the decision of L. Nyabado (RM) in (Kikuyu) MCCC No. E139 of 2022 - Jackson Amango –vs- Auto Industries Ltd and 2 others.
7. The Suit being a running down claim, liability was apportioned at 100% against the Appellants. General damages were awarded to the Respondent as well as special damages. General damages awarded at Kshs.1,300,000/-. Damages for diminished earning capacity at Kshs.2,500,000/-.
Special Damages at Kshs.160,665/-. Future Medical expenses at Kshs.150,000/-. The Respondent was also awarded costs and interest.
8. The Appellants having filed a Memorandum of Appeal, now seek the discretionary remedy from this Court, staying execution. This is for purposes of preserving the Appeal.

Analysis

9. An application for stay of execution under Order 42 of the *Civil Procedure Rules* is a discretionary one.
 1. The Applicant has to satisfy this Court that:
 - a. Substantial loss may occur unless the stay is granted.
 - b. The application has been made without undue delay.
 - c. That security for the due performance of the Decree has been given. See the holding in *Antoine Ndinye –vs- African Virtual University* (2015) eKLR.
11. On substantial loss, the Applicants submit that the Judgment now stands at Kshs.4,110,665.00. That if this amount is paid over to the Respondent, it may be unrecoverable.
12. On delay, the Court notes that judgement was delivered on 26/10/2023 and the Memorandum of Appeal is dated 27/11/2023. The present application is dated 27/11/2023. The Court is of the opinion that there is no delay.
13. On security, the Applicants aver in the Affidavit in support that they are amenable to furnishing security pending Appeal. The details of the security to be furnished have not been disclosed in the Affidavit.
14. The Respondent on the other hand proposes that the Applicants pay half the decretal sums of Kshs.2,217,672.47 to the Respondent. Thereafter, they proceed to deposit the other half of Kshs.2,217,672.47 in an interest earning joint account in the names of Counsels for the parties.
15. The Court has a duty to balance the interests of the parties. The Appellants have a right to access Justice before the Appellate Court. The Respondent at the same time is entitled to enjoy the fruits of his judgment. See *RRW –vs- EKW* (2019) eKLR:
16. The Court also notes that the proceedings of the trial Court have already been typed. An email is on record from the Court dated 28/2/2024 to the parties’ advocates. It directs the Appellants Advocates to file his Record of Appeal, so that the Court can fix a date for directions.
17. The Applicants plead that they are keen to be heard in the Appeal.
18. The matter had been flagged for the Rapid Results Initiative (RRI) in the month of June 2024. Had the Appellants filed their Record of Appeal, directions for filing written submissions would long have



been given. This court would have retired to give a decision on the Appeal, but not on an interlocutory application.

19. This points to circumstances in which parties should promptly respond to correspondence from the Courts, so as to fast track their cases and expedite the resolution of their matters.
20. Had action been taken on the email from the Court dated 28/2/2024, the desired results for the Rapid Results Initiative (RRI), would have been achieved. One of these results is “a High Court that is on time”. A High Court that is on time has to be one dealing with final merit resolutions, and not clogged by interlocutory applications.
21. Having considered all the issues and factors above, this Court has a duty to move this matter forward to its final conclusion. See *Nicholas Stephen Okaka & Anor -vs- Alfred Waga Wesonga* (2022) eKLR.

Determination

22. The Court finds that the Applicants have made out a case for granting of orders of stay of execution, subject to the conditions set out herein.
23. The Court is alive that it has to balance the interests of the parties as well as facilitate the expeditious hearing of the Appeal.
24. The Applicants’ submissions cite the Decretal Sum at Kshs.4,110,665.00 while the Respondent’s submissions place the amount at Kshs.2,217,672.47 x 2 which is Kshs.4,435,344.94. As the Decree is yet to be extracted, the Court is of the view that a sum of Kshs.4,400,000/- will suffice as security.
25. The Court makes orders that the Notice of Motion dated 27/11/2023 is allowed in terms of the following conditions:
 - a. The Applicants/Appellants shall deposit the sum of Kenya Shillings, Four Million Four Hundred Thousand (Kshs.4,400,000/-) as security for the Decree into an interest earning joint account in a reputable Bank, to be held in the joint names of the Advocates for the Parties within Thirty (30) days from the date of this Ruling. In default the order of stay of execution granted shall lapse.
 - b. The Applicants/Appellants to prepare, file and serve a Record of Appeal upon the Respondent’s Advocates within Forty Five (45) days of this Ruling.
 - c. The costs of this application be costs in the cause.
 - d. This matter be mentioned before the Deputy Registrar to confirm the filing of the Record of Appeal and for further appropriate directions.
26. It is so Ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5TH DAY OF JULY, 2024.

.....

NJOROGE BENJAMIN K.

JUDGE

In the presence of:

Mr. Mwanzia holding b for the Appellant.

..... for the Respondent.

