



REPUBLIC OF KENYA



KENYA LAW
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**Dolphine Freighters Limited v Shingoli (Civil Appeal
E038 of 2024) [2024] KEHC 9958 (KLR) (23 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9958 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E038 OF 2024
GMA DULU, J
JULY 23, 2024**

BETWEEN

DOLPHINE FREIGHTERS LIMITED APPELLANT

AND

TEDDY MEJA SHINGOLI RESPONDENT

RULING

1. Before me is an application by way of Notice of Motion dated 24th April 2024 brought by Dolphine Freighters Limited under Order 42 Rule 6 of the [Civil Procedure Rules](#) as well as Sections 1A, 1B, and 3A of the [Civil Procedure Act](#) (Cap.21).
2. The application was filed through counsel Ms. Chamwada & Company Advocates and seeks the following orders:-
 1. (Spent).
 2. (Spent).
 3. That the court be pleased to grant an order of stay of execution of the judgment and decree made in the subordinate court in Voi CMCC No 052 of 2023 on the 17th of April 2024 pending the hearing and final determination of the defendant/applicant's appeal filed in Voi High Court.
 4. That the costs of this application be provided for.
3. The application has grounds on the face of the Notice of Motion that the applicant had already filed an appeal which was arguable; that the applicant will suffer substantial loss if the stay orders sought are not granted; that the appeal will be rendered nugatory if the orders sought are not granted; that the applicant is ready and willing to abide with any orders the court may impose.



4. The application was filed with a supporting affidavit sworn on 25th April 2024 by Symon Lariak the Legal Manager of G. A. Insurance Company Ltd the insurer of 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 Chamwada & Company Advocates for the applicant as well as the submissions filed by Daye MD & Company Advocates for the respondent. I have to acknowledge that each side relied on decided court cases.
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(2) of the [Civil Procedure Rules](#), which states as follows:-

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(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 that 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.
7. Coming back to the present application, was it made without unreasonable delay? Judgment herein was delivered on 17th April 2024 and the application filed on 25th April 2024, a period of less than one month.
 8. In my view, this application was filed without unreasonable delay.
 9. Will the applicant suffer substantial loss if the stay orders sought are not granted? In this regard, I note that this is a money decree for a substantial amount of money, more than four million shillings. The grounds of appeal are both against liability and quantum of damages awarded. I note that the trial court found each of the two drivers 50% to blame for the accident.
 10. In my view, the applicant will suffer substantial loss if the stay orders sought are not granted. I will thus grant stay orders to protect the subject matter which is liability and quantum, to be determined on appeal.
 11. As for provision of security, the applicant has offered to abide by the orders of this court, which in my view is an indication of their willingness to provide sufficient security. I will however not order provision of security, as I do not consider it appropriate in the present case where both liability in negligence, and quantum of damages are contested.
 12. To conclude, I allow the application and grant stay of execution of judgment or decree in Voi Magistrate's Civil Suit No E052 of 2023 pending hearing and determination of the appeal herein Voi HCCA No E038 of 2024.
 13. The costs of this application will abide the decision in the appeal.



DATED, SIGNED AND DELIVERED THIS 23RD DAY OF JULY 2024 IN OPEN COURT AT VOI VIRTUALLY.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

Mr. Chamwada for applicant/appellant

Ms. Daye for respondent

