



REPUBLIC OF KENYA



**Gitau v Mwavula (Civil Appeal E023 of 2024) [2024] KEHC 10314 (KLR) (24 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 10314 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CIVIL APPEAL E023 OF 2024**

**GMA DULU, J**

**JULY 24, 2024**

**BETWEEN**

**BENARD MUCHENE GITAU ..... APPELLANT**

**AND**

**CHRISPIN MWAVULA ..... RESPONDENT**

**RULING**

1. Before me is an application by way of Notice of Motion dated 27<sup>th</sup> March 2024 filed under Section 3, and 3A of the *Civil Procedure Act* (Cap.21), as well as Order 42 Rule 6 and Order 50 rule 5, Order 51 rules 1 & 3, and Order 22 rule 22 of the *Civil Procedure Rules*, seeking the following orders:-
  1. (Spent).
  2. (Spent).
  3. That the court be pleased to grant stay of execution of the judgment/decree in Taveta Civil Suit No. E002 of 2023 (which) was delivered on 22<sup>nd</sup> February 2024 pending hearing and determination of the appeal in Voi High Court Civil Appeal No. E023 of 2024.
  4. That upon grant of prayer No. 3 above, this court be pleased to order that the applicant do produce sufficient security in the form of a suitable Bank Guarantee to secure the judgment herein of Kshs. 202,000/=
2. The application has grounds on the face of the Notice of Motion and was filed with a supporting affidavit sworn on 27<sup>th</sup> March 2024 by Benard Muchene Gitau the appellant/applicant in which it was deponed that an appeal had already been field and that if the stay of execution orders sought are not granted, the appeal will be rendered nugatory.
3. The application was opposed through a replying affidavit sworn on 3<sup>rd</sup> April 2024 by the respondent Chrispin Mwavula.



4. The application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Kimondo Gachoka & Company Advocates for the applicant, as well as the submissions filed by Njoroge Mwangi & Company Advocates for the respondent.
5. 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 of the *Civil Procedure Rules*, especially Rule 6(2).
6. I note that the appeal herein is from a money decree and that the appeal filed is principally challenging the quantum of damages awarded, that is, general damages Kshs. 200,000/=, and special damages of Kshs. 2,000/=.
7. On whether the application was filed without unreasonable doubt, I note that the judgment herein was delivered on 22<sup>nd</sup> February 2024 and this application filed on 27<sup>th</sup> March 2024, after appeal was filed.
8. In those circumstances, I find that the application herein was filed without unreasonable delay.
9. Will the applicant suffer substantial loss if the stay of execution orders sought are not granted? In my view the applicant will suffer substantial loss only if the total decretal sum is paid and then the appeal succeeds and the applicant is not able to recover the whole amount from the respondent.
10. In the circumstances of this case therefore, in my view, stay orders can be justified only subject to payment by the applicant of part of the decretal amount to the respondent.
11. With regard to the consideration of provision of security by the applicant, I note that the applicant has offered to provide a Bank Guarantee as security. In my view however, part payment of the decretal amount to the respondent will be adequate security.
12. I thus allow the application and order as follows:-
  - a. I grant stay of execution of judgment or decree herein pending determination of the appeal.
  - b. The stay of execution orders granted in (a) above is subject to the applicant paying the respondent part of the decretal amount Kshs. 80,000/= through counsel within forty five (45) days from today.
  - c. In default of (b) above, the stay orders herein granted will automatically lapse and be of no effect.
  - d. The costs of the application will abide the decision in the appeal.

**DATED, SIGNED AND DELIVERED THIS 24<sup>TH</sup> DAY OF JULY 2024 IN OPEN COURT AT VOI VIRTUALLY.**

**GEORGE DULU**

**JUDGE**

In the presence of:-

Alfred – Court Assistant

Mr. Nganga for applicant

Mr. Kazungu for respondent

