



Gitau v Galgalo (Civil Appeal E006 of 2024) [2024] KEHC 9554 (KLR) (3 July 2024) (Ruling)

Neutral citation: [2024] KEHC 9554 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E006 OF 2024**

GMA DULU, J

JULY 3, 2024

BETWEEN

BENARD MUCHENE GITAU APPELLANT

AND

NGONYO GALGALO RESPONDENT

RULING

1. Before me is an application by way of Notice of Motion dated 21st February 2024 filed under Section 3, and 3A of the *Civil Procedure Act* (Cap.21), and 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. 021 of 2022 (which) was delivered on 25th January 2024 pending hearing and determination of the appeal in Voi High Court Civil Appeal No. E006 of 2024.
 4. That upon grant of prayer No. 3 above, this court be pleased to order that the applicant do provide sufficient security in the form of a suitable Bank Guarantee to secure the judgment herein of Kshs. 222,000/=
2. The application has grounds on the face of the Notice of Motion and was also filed with a supporting affidavit sworn by Benard Muchene Gitau the appellant/applicant, in which it was deponed that the appeal herein had already been field and that if the stay orders sought were not granted, then the appeal would be rendered nugatory.
3. I see no replying affidavit filed. However, 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.

4. 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).
5. I note that the appeal filed is from a money decree and that the grounds of appeal principally challenging the quantum of damages awarded of Kshs. 220,000/= as general damages, and special damages of Kshs. 2,000/=.
6. With regard to the consideration whether the application was filed without unreasonable delay, I note that the judgment herein was delivered on 25th January 2024 and this application was filed on 21st March 2024 after appeal filed on 13th February 2024.
7. In those circumstances, I find that the application was filed without unreasonable delay.
8. 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 amount is paid and then the appeal succeeds and the applicant is not able to recover the whole amount from the respondent.
9. In the circumstances of this case therefore, stay of execution orders can only be justified if made subject to payment of part of the decretal amount to the respondent.
10. With regard to the consideration of provision of security, the applicant has offered to provide a bank guarantee. However, in my view the part payment of the decretal amount herein provides sufficient security.
11. I thus allow the application and order as follows:-
 - a. I grant stay of execution of judgment or decree herein as prayed pending determination of High Court Civil Appeal E006 of 2024.
 - b. The stay orders granted in (a) above are 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 above 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 3RD DAY OF JULY 2024 IN OPEN COURT AT VOI VIRTUALLY.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

Mr. Njuguna for applicant

Mr. Kazungu for respondent

