



REPUBLIC OF KENYA



**Mwangi & another v Jomo (Civil Appeal E046 of 2023)
[2024] KEHC 9027 (KLR) (17 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9027 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E046 OF 2023
GMA DULU, J
JULY 17, 2024**

BETWEEN

WILSON WACHIRA MWANGI 1ST APPLICANT

**BEAVERLINE MANCHESTER TRAVELLERS SACCO LIMITED 2ND
APPLICANT**

AND

WILLIAM OCHIENG JOMO RESPONDENT

RULING

1. Before me is an application dated 25th March 2024 brought by way of Notice of Motion under Section 3, 3A of the *Civil Procedure Act* (Cap.21), and Order 42 Rule 6, Order 50 Rule 5, and Order 51 Rules 1 & 3 and Order 22 Rule 22 of the *Civil Procedure Rules*.
2. The application was filed through counsel M/s Kimondo Gachoka & Company Advocates and seeks the following orders:-
 1. (Spent).
 2. (Spent).
 3. That the court be pleased to grant a stay of execution of the judgment/decree in Voi Civil Case No E165 of 2022 delivered on 10th August 2023 pending the hearing and full determination of the appeal in Voi HCCA No E046 of 2023.
 4. That upon grant of prayer 3 above, the court be please to order that the applicant does provide sufficient security in the form of a sustainable Bank Guarantee to secure the judgment herein of Kshs 202,550/=
 5. That costs of the application be in the cause.



3. The application has grounds on the face of the Notice of Motion that judgment had been delivered on 10th August 2023 in Voi Civil Case No E165 of 2022 and an appeal had already been filed; that the appeal is against a substantial amount; that if stay orders are not granted the appeal may be rendered nugatory as the respondent might not be able to repay the decretal amount.
4. The application was filed with an affidavit sworn by Wilson Wachira Mwangi one of the appellants amplifying the grounds of the application.
5. The application is opposed through a replying affidavit sworn by William Ochieng Jomo the respondent on 6th May 2024, deponing that the entire decretal amount be deposited in a joint interest earning account within 30 days.
6. 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 applicants, as well as the submissions filed by Njoroge Mwangi & Company Advocates for the respondent.
7. I note that the respondent's counsel submitted that if the application is allowed, then the decretal amount be deposited in a joint interest earning account within 30 days.
8. This being an application for stay of execution of judgment or decree pending determination of appeal, it is governed by the provisions of Order 42 Rule 6 of the [Civil Procedure Rules](#).
9. In my view, this application was filed without unreasonable delay though it was filed on 25th March 2024 after appeal was filed on 23rd August 2023. However, I have to point out that this is a borderline case on delay, and the application was only saved by the fact that appeal was filed in good time.
10. As to whether the applicant is likely to suffer substantial loss if the stay of execution orders sought are not granted, in my view, if the entire decretal amount is paid out to the respondent, the applicant might suffer substantial loss because the respondent might not be in a position to repay the amount.
11. As for provision of security, the applicant has offered to provide a bank guarantee. However, the respondent has proposed that the entire decretal amount be paid into a joint interest earning bank account in the names of the Advocates. In my view, it is more appropriate herein for the applicants to pay the decretal sum into a joint interest earning account.
12. Consequently, I allow the application and order as follows:-
 - i. This court grants stay of execution of judgment/decree in Voi CMCC No E165 of 2022 delivered on 10th August 2023 pending hearing and full determination of Voi HCCA No E046 of 2023
 - ii. The above stay of execution orders are subject to the condition that the applicant deposits the entire decretal amount Kshs 202,550/= in a joint interest earning bank account in the names of the counsel for the parties within forty (40) days from today.
 - iii. The costs of this application will abide the determination of the appeal.

DATED, SIGNED AND DELIVERED THIS 17TH DAY OF JULY 2024 IN OPEN COURT AT VOI VIRTUALLY.

GEORGE DULU

JUDGE

In the presence of:-



Alfred/Trizah – Court Assistants
Mr. Ndolo for the applicants
No appearance for the respondent

