



**Nduruhu & another v TNM (Suing through mother and next friend Njeri Waweru)
(Civil Appeal E018 of 2023) [2024] KEHC 9555 (KLR) (15 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9555 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL APPEAL E018 OF 2023
GMA DULU, J
JULY 15, 2024**

BETWEEN

FREDRICK MWENDA NDURUHU 1ST APPELLANT

SAMUEL MWANGI NJOROGE 2ND APPELLANT

AND

**TNM (SUING THROUGH MOTHER AND NEXT FRIEND NJERI
WAWERU) RESPONDENT**

RULING

1. Before me is an application by way of Notice of Motion dated 19th July 2023 filed by the applicants through counsel Kimondo Gachoka & Company Advocates under Section 1A, 1B, 3, 3A and 79G and 95 of the *Civil Procedure Act* (Cap.21) and Order 22 Rule 22 and Order 42 Rule 6, Order 50 Rule 6 and Order 51 Rules 1 and 3 of the *Civil Procedure Rules* 2010, seeking the following orders:-
 1. (Spent).
 2. (Spent).
 3. (Spent).
 4. That the court be pleased to stay execution and proceedings of the judgment from Voi CMCC Civil Suit No. E046 of 2020 pending hearing and determination of this appeal herein.
 5. That the costs of this application abide the outcome of the appeal.
2. The application has grounds on the face of the Notice of Motion that judgment had been delivered in Voi CMCC No. E046 of 2020 on 5th May 2023 and that Voi Civil Appeal No. E018 of 2023 had been filed; and that if the stay orders sought herein are not granted the applicant will suffer substantial



loss as the decretal amount paid might not be repaid in case the appeal is successful, that the appeal has high chances of success.

3. The application was filed with a supporting affidavit sworn on 19th July 2023 by Nannungi Mariat Advocate for the applicant, amplifying the grounds of the application.
4. The application has been opposed through a replying affidavit sworn by Esther Njeri Waweru who was previously a minor but now an adult, on 27th July 2023, in which it was deponed that the application is incompetent, misconceived and mainly meant to further delay payment of the fruits of the judgment to her and should thus be dismissed with costs.
5. 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 S. N. Ngare & Company Advocates for the respondent.
6. 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 especially Rule 6(2).
7. From the grounds of appeal herein, I note that the appeal is on the quantum of damages awarded.
8. The first consideration is whether the application was filed without unreasonable delay. Judgment herein was delivered on 5th May 2023 and this application filed on 19th July 2023, a period slightly more than two (2) months. In my view, taking into account all the circumstances of the matter, this application was filed without unreasonable delay.
9. As to whether the applicant will suffer substantial loss if the stay orders sought are not granted, I note that general damages of Kshs. 300,000/= were awarded by the trial court, together with special damages. The beneficiary of the judgment was a minor, but now an adult.
10. In my view, this being a monetary award and the grounds of appeal being on quantum of damages, the applicant will only suffer substantial loss if the whole amount is paid to the respondent now, and then not recovered if the appeal succeeds. I will thus grant stay orders subject to payment of part of the decretal amount to the respondent.
11. Coming now to provision of security by the applicants, I note that the applicants have not offered to provide any security for grant of stay orders, but in my view, the part payment of the decretal amount to be ordered by this court, will be sufficient security.
12. Consequently, I allow the application and order as follows:-
 - i. I grant stay of execution of judgment or decree herein as requested pending determination of the appeal filed.
 - ii. The stay of execution orders granted herein are subject to the applicants/appellants paying part of the decretal amount Kshs. 140,000/= to the respondent through counsel within 45 days from today.
 - iii. In default of (ii) above, the stay orders herein granted will automatically lapse and be of no effect.
 - iv. The costs of this application will abide the decision in the appeal.

**DATED, SIGNED AND DELIVERED THIS 15TH DAY OF JULY 2024 IN OPEN COURT AT VOI.
GEORGE DULU**



JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

No appearance for applicants

Mr. Ndungu for respondent

