



REPUBLIC OF KENYA



KENYA LAW
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**Simba Coach Limited v Mjomba (Civil Appeal E051 of 2021)
[2023] KEHC 775 (KLR) (2 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 775 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CIVIL APPEAL E051 OF 2021
GMA DULU, J
FEBRUARY 2, 2023**

BETWEEN

SIMBA COACH LIMITED APPELLANT

AND

ANASTANZIA MANGA MJOMBA RESPONDENT

RULING

1. Before me is an application by way of Notice of Motion dated 24th September 2021, filed by Simba Coach Ltd through counsel M/s Kimondo Gachoka under Order 22 Rule 22, Order 42 Rule 4 and 6 and Order 51 Rules 1 and 3 of the *Civil Procedure Rules* 2010 as well as section 3 and 3A of the *Civil procedure Act* (Cap. 21).
2. The application has six (6) prayers, some of which have been spent as follows –
 1. (Spent)
 2. (Spent)
 3. That the court be pleased to stay the execution of the judgment/decree obtained herein pending the hearing and determination of the appellants/applicants appeal filed in the High Court of Kenya at Makueni as Civil Appeal No. 51 of 2021.
 4. That the court be pleased to order that the applicant do provide sufficient security in form of a bank guarantee from a reputable financial institution to secure the judgment herein.
 5. (Spent)
 6. That the costs of the application abide the outcome of the appeal.
3. The application has grounds on the face of the Notice of Motion that the plaintiff was awarded general damages of Kshs.450,000/= Kilungu PMCC NO. 143 of 2020 plus costs and interest, and that the



- appellant is apprehensive that the plaintiff/respondent may levy execution and if paid, may not be in a position to repay the amount if the appeal is successful.
4. The application was filed with a supporting affidavit sworn on 24/09/2021 by Keving Ngure, Deputy Claims Manager of Direct Assurance Company Ltd, the insurers of motor vehicle KBQ 581C amplifying the grounds above.
 5. The application has been opposed through grounds of objections filed by Waiganjo Wachira & Co advocates for respondents.
 6. The application was canvassed through filing of written submissions. In this regard, I have perused and considered the submissions filed by Kimondo Gachoka & Company for the applicant and the submissions filed by Waiganjo Wachira & Company for the respondents.
 7. This being an application for stay of execution of judgment or decree, it is governed by the provisions of Order 42 Rule 6 of the Civil Procedure Rules. In particular Rule 6(2) provides as follows-
6(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 as been given by the applicant.
 8. The judgment herein was delivered on 6th August 2021. The application was filed on 24/09/2021. In my view the application was made without unreasonable delay.
 9. Will the applicant suffer substantial loss if the stay orders sought are not granted?
 10. The applicant says that the respondent might not be able to repay the amount of award, if the appeal succeeds.
 11. I have perused the Memorandum of Appeal and in my view, the appeal is arguable, and may go either way. The appeal is however on quantum of damages. Thus,, though I find that the applicant might suffer substantial loss if repayment is not made by the respondent, I also find that stay order is only justified if part payment of the decretal amount made. I will thus grant stay of execution orders subject to the applicant paying the respondent part of the award.
 12. With regard to security, the applicant has offered to provide a guarantee from a financial institution. In my view, however, the part payment of the decretal sum to the respondent will serve as adequate security herein.
 13. For the above reasons therefore, I allow the application on the following terms –
 - i. I grant stay of execution of judgment/decree pending appeal.
 - ii. The above stay of execution order (i) is subject to the applicant paying the respondent through counsel within 45 days from today part of the decretal amount of Kshs.200,000/=.
 - iii. In case of default of (ii) above, the stay orders herein granted will automatically lapse and be of no effect.
 - iv. Costs of the application will follow the decision of the appeal.

DELIVERED, SIGNED & DATED THIS 2ND DAY OF FEBRUARY, 2023, IN OPEN COURT AT MAKUENI.



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GEORGE DULU

JUDGE

