



Kihuna & another v Murei & another ((Suing as the Personal Representatives of the Estate of the Late Nathan Kiptoo Rono)) (Civil Appeal E006 of 2023) [2023] KEHC 27317 (KLR) (2 August 2023) (Ruling)

Neutral citation: [2023] KEHC 27317 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CIVIL APPEAL E006 OF 2023
SN MUTUKU, J
AUGUST 2, 2023**

BETWEEN

VICTOR NG'ANG'A KIHUNA 1ST APPELLANT

VISION FUND KENYA LIMITED 2ND APPELLANT

AND

VICKY JERONO MUREI & ANOTHER RESPONDENT

(SUING AS THE PERSONAL REPRESENTATIVES OF THE ESTATE OF THE LATE NATHAN KIPTOO RONO)

RULING

1. This ruling relates to the Notice of Motion dated 23rd January 2023 brought by the Appellants. It seeks stay of execution of the judgment and decree dated 20th January 2023 issued against the Appellants pursuant to the Plaint dated 8th July 2022 filed in Kajiado CMCC No 60 of 2020 pending, firstly, the hearing of the Notice of Motion and secondly, the appeal.
2. The grounds in support of the application are found on the face of it and in the Supporting Affidavit to the effect that the Defendant was held 100% liable in a personal injury claim filed vide a Plaint dated 8th January 2023 with the Plaintiff being awarded Kshs 14,000,000; that if the Plaintiff is allowed to execute the judgment, the appeal will be rendered nugatory thereby prejudicing the Applicants.
3. The application is not opposed. Through a Replying Affidavit dated 26th June 2023, the Respondents have stated that they are not opposed to the Application save that they request that the Appellants provide security for costs by depositing the entire decretal sum being Kshs 14,503,680 in a joint interest-earning account held in the name of both counsel representing the parties.



4. An attempt to have both counsel agree on the deposit of the decretal sum deposited in a joint account failed and both Ms Waithira, learned counsel for the Respondents and Mrs. Umba, learned counsel for the Appellants left the matter for the court to decide.
5. The applicable law for the grant of stay pending an appeal is Order 42 Rule 6 (1) and (2) of the Civil Procedure Rules. It provides that:
 - (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
 - (2) No order for stay of execution shall be made under subrule (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 has been given by the applicant.
6. Given that this application is not opposed, my singular duty is to determine the issue of security. I have considered the matter. It is claimed that the amount awarded for damages is exorbitant and that the Defendant was held 100% liable for the accident. These are the issues raised in the Memorandum of Appeal filed herein.
7. I will and do hereby allow this application in the following terms and conditions:
 - i. Stay of execution of the judgment of the lower court in CMCC No 60 of 2020 is hereby granted pending the hearing and determination of the appeal upon payment of half the decretal amount as security.
 - ii. The amount referred to in (i) above, shall be deposited in an interest-earning account held in joint names of both counsel representing the Appellants and the Respondents within 30 days from the date of this ruling.
 - iii. The Appellants is allowed 60 days to prepare, file and serve a Record of Appeal.
 - iv. This matter shall be mentioned on.....to confirm compliance with these orders and to give directions on the appeal.
8. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 2ND AUGUST 2023.

S. N. MUTUKU

JUDGE

