



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL APPEAL NO. E697 OF 2021**

**GREAT RIFT EXPRESS SHUTTLE SERVICES LTD.....1<sup>ST</sup> APPELLANT/APPLICANT**

**MUIGAI KAMAU.....2<sup>ND</sup> APPELLANT/APPLICANT**

**-VERSUS-**

**OON (Suing as the mother and next friend of JA-a Minor).....RESPONDENT**

**RULING**

1. This ruling relates to the Notice of Motion dated 22<sup>nd</sup> October, 2021 taken out by the 1<sup>st</sup> and 2<sup>nd</sup> appellants/applicants and supported by the grounds set out on its body and the facts deponed in the affidavit of advocate Janerose Nanjira. The order being sought is that for stay of execution of the judgment delivered by the trial court on 24<sup>th</sup> September, 2021 vide Milimani CMCC NO. 7230 OF 2019 pending the hearing and determination of the appeal.
2. The respondent swore a replying affidavit on 3<sup>rd</sup> November, 2021 in retort to the Motion.
3. The Motion was canvassed through brief oral arguments made by the parties' respective advocates, where they relied upon the averments made in the supporting and replying affidavits.
4. I have considered the grounds laid out on the body of the Motion; the facts deponed in the supporting and replying affidavits; and the respective oral arguments.
5. As earlier indicated, the substantive order sought is that for stay of execution of the decree pending appeal. The guiding provision is **Order 42, Rule 6(2)** of the **Civil Procedure Rules** which sets out the conditions in determining an application for stay.
6. The first condition is that the application must have been made without unreasonable delay. Janerose Nanjira states in her affidavit that previously, a 30-day stay of execution had been granted in the matter which order has since lapsed. In reply, the respondent states that there has been a delay of over one (1) month between the time of delivery of the judgment and lodging of the instant Motion.
7. From my study of the record, it is apparent that none of the parties has availed a copy of the impugned judgment for this court's reference. Nonetheless, going by the averments of the parties, it is apparent that the aforementioned judgment was delivered on 24<sup>th</sup> September, 2021. I note that there has been a lapse of about one (1) month between the date of delivery of the judgment and the bringing of the instant Motion. I am therefore satisfied that the delay is not unreasonable.
8. The second condition concerns the substantial loss likely to be suffered by the applicant if the order for stay is denied. In her supporting affidavit, advocate Janerose Nanjira states that unless an order for stay of execution is granted, the respondent is likely to execute the decree thereby rendering the appeal nugatory and resulting in substantial loss to the applicants.
9. The respondent on her part states that the applicants have not demonstrated the substantial loss they stand to suffer and that the instant Motion is purely aimed at delaying her entitlement to enjoy the fruits of her judgment.
10. Upon weighing the above contending positions, I acknowledge on the one part that a party is entitled to the fruits of his or her judgment. On the other part, it is apparent that the judgment in place is monetary in nature.
11. In considering the competing interest of the parties and the interest of substantive justice, I will accept the averments made by the applicants on the likelihood of substantial loss occurring.

12. Under the final condition which is the provision of security for the due performance of such decree or order, the applicants have indicated their readiness and willingness to furnish a bank guarantee as security, whereas the respondent urges that at least three quarters of the decretal sum be paid to her while the remainder be deposited in a joint interest earning account.

13. In making an order on the provision of security, this court must balance the interest of the parties. In the present instance, it is noteworthy that the respondent has not shown any pressing need that would require payment of part of the decretal amount to her at this stage. It is also noteworthy that the respondent is not amenable to the furnishing of a bank guarantee.

14. Consequently, I will allow the Motion dated 22<sup>nd</sup> October, 2021.

An order for stay of execution judgment delivered by the trial court on 24<sup>th</sup> September, 2021 in Milimani CMCC NO. 7230 OF 2019 and consequent decree is granted on the condition that the applicants deposit the entire decretal sum in an interest earning account to be held in the joint names of the parties' advocates and or firm of advocates within 45 days from today, failing which the order for stay shall automatically lapse. Costs of the Motion shall abide the outcome of the appeal.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 11TH DAY OF FEBRUARY, 2022.**

.....

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the 1<sup>st</sup> and 2<sup>nd</sup> Appellants/Applicants

.....for the Respondent