



Golden Africa Kenya Limited v CJO & 3 others (Civil Appeal E228 of 2024) [2024] KEHC 16681 (KLR) (20 November 2024) (Ruling)

Neutral citation: [2024] KEHC 16681 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CIVIL APPEAL E228 OF 2024
RE ABURILI, J
NOVEMBER 20, 2024**

BETWEEN

GOLDEN AFRICA KENYA LIMITED APPELLANT

AND

CJO 1ST RESPONDENT

**GM (MINOR SUIING THROUGH FATHER AND NEXT FRIEND
OBO) 2ND RESPONDENT**

**JAO (MINOR SUIING THROUGH FATHER AND NEXT FRIEND
OBO) 3RD RESPONDENT**

**JO (MINOR SUIING THROUGH FATHER AND NEXT FRIEND
FOO) 4TH RESPONDENT**

(Being an application for stay of execution pursuant to the Judgment, Decree and Order of the Hon. M. N. Olonyi in the Magistrate Court at Tamu in Civil Case No. E133 of 2023 (Consolidated with Nos. E131, E132, and E134 delivered on 18th October, 2024)

RULING

1. What is before me is an application for stay of execution of decree in Tamu SPM MCCE No. E133 of 2023 consolidated with E132, E134 and E131 of 2023. However, in the application for stay pending appeal, one of the conditions to be met, under Order 42 Rule 6(2) of the Civil Procedure Rules is that an applicant shall give security for the due performance of decree.
2. In this case where 4 matters were consolidated, although this court has not been supplied with court proceedings of the lower court, I have seen the Judgment which is impugned by the Appellant herein.
3. The court determined liability in the test suit. It also determined quantum of damages payable, both general and special damages and awarded costs to the Respondents.



4. I have also seen the decree issued on 29th October 2024 with refers to only MCC No. E133 of 2023 and not to the rest of the other suits as consolidated.
5. Both parties are unclear as to whether the consolidation order was on liability alone or on quantum of damages as ordered in MCC No. E133 of 2023 to apply to the rest of the cased E131, E132 and E134 of 2023.
6. In view of the lack of clarity of the judgment of the trial court as rendered, I hereby invoke the provisions of Section 78 of the *Civil Procedure Act* and remand the matter to the trial court for determination of only one issue to clarify the Judgment delivered on October 18, 2024 on the issue of whether the award of quantum of damages made in MCC No. E133 of 2023 applies to all the other suits in the series being MCC Nos. E131, E132 and E134 of 2023.
7. Upon such clarification of the Judgment, the trial court file shall be resubmitted to this court to determine the question of liability raised by the Appellant.
8. Pending this process, I hereby stay any execution of the unclear decree issued by the lower court.
9. This Ruling to be typed and served upon the Resident Magistrate, Tamu Law Courts for compliance.
10. This appeal shall be mentioned in the new term on January 23, 2025 to confirm compliance.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 20TH DAY OF NOVEMBER, 2024

R. E. ABURILI

JUDGE

