



**Transcounty Shuttle Ltd v Obungu (Miscellaneous Civil Application  
E356 of 2024) [2024] KEHC 15420 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15420 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
MISCELLANEOUS CIVIL APPLICATION E356 OF 2024  
RE ABURILI, J  
DECEMBER 5, 2024**

**BETWEEN**

**TRANSCOUNTY SHUTTLE LTD ..... APPLICANT**

**AND**

**PHILIP ONYANGO OBUNGU ..... RESPONDENT**

**RULING**

1. The application dated 4<sup>th</sup> November 2024 seeks leave to appeal out of time and stay of execution of decree issue in Kisumu SCC No. E107 of 2024 delivered on 24<sup>th</sup> September 2024 pending hearing and determination of the intended appeal.
2. The application which has been argued orally is opposed by the Respondent who filed a replying affidavit and a supplementary affidavit.
3. This court has considered the arguments by both parties and the fact that the delay in filing of the appeal is not inordinate and that there is no evidence that it was deliberate.
4. There is no dispute that parties were negotiating for a settlement and that the Respondents insurer had internal issues which ended up in court making it impossible to settle claims whether negotiated or otherwise.
5. The applicant in my view, has made concerted efforts to save his property from being attached by approaching the courts on all fronts and cannot be faulted for that as legal processes are complex and more often than not, a party can suffer an injustice because of no fault of their own.
6. The appeal is against quantum of damages of Kshs.200,000 which is said to be exorbitant and the applicant has undertaken to deposit it in a joint interest earning account, which proposal is not denied by the Respondent Decree holder.



7. Although no substantial loss has been demonstrated, I am satisfied that in the interest of justice, the applicant ought to be accorded the opportunity to ventilate its grievances on appeal and preserve the subject matter of the appeal by granting a stay pending appeal as intended, noting that Order 42, Rule 6(2) of the *Civil Procedure Rules* does not bar this court from hearing a similar application which is pending in the lower court or which has been declined by the lower court.
8. I must however, balance the interests of both parties so that the Respondent decree holder does not carry with him a barren decree all along.
9. In the premises, I grant the applicant leave to appeal out of time and direct that the appeal be filed and served within 10 days of today.
10. Pending the filing, hearing and determination of the intended appeal, I grant stay of execution of decree in Kisumu SCC No. E167 of 2024 conditional upon the Applicant paying to the Respondent half of the decretal sum inclusive of costs and depositing the balance in a joint fixed interest earning account to be opened by advocates or both parties to this appeal within 21 days of today and in default, execution to issue.
11. Costs shall be in the appeal.
12. Ruling to be typed forthwith.
13. This file is closed.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 5<sup>TH</sup> DAY OF DECEMBER, 2024**

**R. E. ABURILI**

**JUDGE**

