

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HCC MISC.E373 OF 2020

CIC GENERAL INSURANCE LIMITED.....APPLICANT

VERSUS

PAUL MAISYO MUSYOKA.....RESPONDENT

RULING

By an application dated 10th September, 2020 the applicant seeks an order of stay of execution of the lower court Judgment, and also leave to file an appeal out of time. The judgment in the lower court arose from declaratory suit, after which a sum of Kshs. 406,244.58 was awarded to the respondent. That award aggrieved the applicant considering that the matter was decided before a defence was filed, and after an interlocutory judgment was entered in favour of the respondent.

The application is opposed and there are grounds of opposition filed on behalf of the respondent. Both parties filed submissions which I have noted.

There is evidence that the applicant instructed counsel to file a defence which was not done for reasons that a settlement was in the offing. Correspondence annexed to the affidavit in support of the application shows that the applicant was always ready to settle this matter. The applicant through counsel, repeatedly communicated the willingness to settle this matter, notwithstanding the intended appeal against the decretal sum.

The quest to appeal, at least from the record, is informed by the medical reports upon which the original award was made. Any party before the court should be given the opportunity to exhaust all the avenues available provided no prejudice shall be occasioned to the other party.

While leaving the option to settle the matter in view of the history towards that direction, I am inclined to allow the application for stay of execution on condition that, the appellant shall deposit a sum of Kshs. 200,000/= in an interest earning account in the joint names of the advocates appearing for the parties within 30 days from the date of this ruling. I also grant leave for the applicant to file the memorandum of appeal within 14 days from the date of this ruling.

Thereafter, the applicant shall ensure the record of appeal is filed within 30 days from the date of filing the Memorandum of Appeal, subject to the availability of the lower court record. The costs shall abide by the decision of the appeal.

Dated, signed and delivered at Nairobi this 11th day of March, 2021.

A. MBOGHOLI MSAGHA

JUDGE