



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT NAIROBI**

**CIVIL APPEAL NO. E 168 OF 2020**

**GLADYS MWENDE KIOKO.....1<sup>ST</sup> APPELLANT**

**SUPERORDINATE INVESTMENTS LIMITED.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**PAULINE WAYUA MBATHA.....RESPONDENT**

**RULING**

There is a judgment in favour of the respondent against the appellants in the lower court. The appellants were aggrieved by that judgment and intend to file an appeal therefrom. The present application dated 13<sup>th</sup> August, 2020 seeks an order of stay of execution of the lower court judgment. It is supported by grounds set out and also an affidavit sworn by the 1<sup>st</sup> appellant.

The lower court judgment was delivered on 30<sup>th</sup> July, 2020 and this application was filed on 13<sup>th</sup> August, 2020. There was therefore no delay in bringing the application. The appellants have not cited Order 42 Rule 6 of the Civil Procedure Rules. That notwithstanding, I shall consider the application on merit.

There is an affidavit in reply sworn by the respondent who opposes the application. Other than the concern that the advocate for the appellant did not comply with Order 9 Rule 5 of the Civil Procedure Rules, the appellants are supposed to comply with the requirements of Order 42 Rule 6 aforesaid. Most importantly, they have to demonstrate what substantial loss they may incur if the order is not given. They are also supposed to show that the intended appeal is arguable. Ordinarily, an order for posting security would be issued in such applications.

I have related the application to the judgment of the lower court and also the plaint, a copy of which is part of the record before me. The entire dispute is premised on a transaction between the parties where the respondent is said to have advanced some money to the appellants, which the appellants failed to pay back and instead gave some cheques which were dishonoured when presented to the bank for payment.

This is a money decree. Although the appellants lodged the application in time, they have not demonstrated what substantial loss they may incur if the order is not granted. They have also not offered any security in the event the appeal is dismissed. There is also no allegation that in the event the decree is settled the respondent shall not be able to pay back the money if the appeal succeeds. On the contrary, the respondent has stated she is in a financial position to refund the decretal sum in the event the appeal succeeds.

Going by the pleadings in the lower court upon which the judgment was grounded, and considering all the circumstances relating to the dispute, a stay of execution in this matter cannot be granted without resultant injustice on the part of the respondent. The end result is that this application is dismissed with costs to the respondent.

**Dated, signed and delivered at Nairobi this 4<sup>th</sup> day of March, 2021.**

**A. MBOGHOLI MSAGHA**

**JUDGE**