



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CIVIL APPEAL NO. E022 OF 2020

TOYOTA KENYA LIMITED.....APPELLANT

VS.

JAMES NJENGA KINYANJUI.....RESPONDENT

RULING

1. This is a ruling of the Notice of Motion application dated 1st December, 2020. That application is filed by **TOYOTA KENYA LIMITED**, the appellant in this appeal. The appeal is against the trial court's Ruling of 25th November, 2020 in Limuru Chief Magistrate's Court Civil Case No. 333 of 2019. By that ruling the trial court ordered the appellant to release motor vehicle registration No. KCE 803Q upon the respondent in this appeal, **JAMES NJENGA KINYANJUI**, providing Kshs.100,000/= as security, which amount was to be deposited into joint account of both advocates of the parties. The trial court also restrained the appellant from seizing the said vehicle. The trial court ordered the freezing of appellant's storage charges of that vehicle as at the date that ruling was delivered.
2. The appellant being aggrieved with that ruling filed this appeal. Pending hearing and determination of the appeal, the appellant prayed, by the present application for stay of the orders thereof.
3. The application is supported by the affidavit of the appellant's advocate, *Vivienne Wanjiru*. The appellant, through that affidavit stated that it stands to suffer substantial loss if stay is not granted and the vehicle is released without security. The appellant quantified the amount of storage charges due as at the date of filing the application as Kshs.672,000/=.
4. The respondent relied on his affidavit dated 23rd December, 2020. The respondent in that affidavit gave the background of the dispute that is, he took the subject vehicle to the appellant, at the appellant's invitation, to service the subject vehicle. That he paid for that service but the appellant declined to release the vehicle on making that payment due to accumulated storage charges. The respondent also stated that the vehicle was his source of business and his family was suffering without the vehicle.
5. The condition which must be met by an applicant are set out in **Order 42 Rule 6** of the Civil Procedure Rules which provides:-

“(2) No order for stay of execution shall be made under sub-rule (1) unless:-

(a) The court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

(b) Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

6. Having considered the rival submissions and affidavit evidence, I find this is a case where the court is required to balance the interest of the two parties. That balancing act, in case for stay pending appeal was considered in the case of **TASSAM LOGISTICS LTD VS. DAVID MACHARIA & ANOTHER (2019) eKLR** thus:-

“16. They cite the authority of KENYA COMMERCIAL BANK LTD –VS- SUN CITY PROPERTIES LTD & 5 OTHERS [2012] eKLR where it was held:

“In an application for stay, there are always two competing interest that must be considered. These are that a successful litigant should not be denied the fruits of his judgment and that an unsuccessful litigant exercising his undoubted right of appeal should be safeguarded from his appeal being rendered nugatory. These two competing interests should always

be balanced.””

7. The appellant has deponed that if the vehicle is released under the conditions set by the trial court it will suffer substantial loss because it holds the vehicle as security for the amount owed by the respondent. It is clear that there is basis of that deposition because the respondent when he was ordered to deposit Kshs.100,000/= as deposit, he was unable to raise the same within the time frame given by the trial court – indeed it took him 5 months to raise that amount. It becomes obvious that if indeed the vehicle is released to the respondent and the appellant succeeds in its appeal, the appellant may suffer substantial loss of the security it holds the vehicle having been released. There is no guarantee that on release of that vehicle the respondent will not dispose of it.

8. It is because of the above I will grant conditional orders as follows:-

(a) The order of 25th November, 2020 in Limuru Chief Magistrate’s Court Civil Case No. 333 of 2019 in as far as requires release of vehicle registration No. KCE 803Q is hereby stayed pending hearing and determination of this appeal.

(b) The costs of the Notice of Motion dated 1st December, 2019 shall abide with the outcome of this appeal.

RULING DATED, SIGNED AND DELIVERED AT KIAMBU THIS 13TH DAY OF MAY, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant.....Ndege

Appellant:No appearance

Respondent:Ms. Wambua

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE