



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

MISC. CIVIL CASE NO. E0017 OF 2021

UNITED SSIASS INVESTMENTS LTD.....1ST APPLICANT

PETER MWENJE.....2ND APPLICANT

VERSUS

NDEGWA NGUNYI, DANIEL NGUNYI NDEGWA &

MARY WANGUI (Suing as the administrators of the estate of

JOHN MWANGI NDEGWA)RESPONDENT

RULING

This matter came for hearing of Notice of Motion dated 27/04/2021. The Applicants were represented by Mr. Matiri Advocates and the Respondent by Mr. Opondo Advocate.

The core issues of this application are hinged on the elements of stay of execution and leave to appeal out of time.

Both sides attempted an agreement on execution of the two (2) issues above. The bone of contention was that the Applicant liability is capped at Kshs.3,000,000/- but the decretal amount impugned exceeds Kshs.8,000,000/-. Thus the insurance for the Applicant proposed to deposit Kshs.2,000,000/- in court or interest earning account and Kshs.1,000,000/- be paid to the Respondents.

The Respondents side countered the proposal by suggestion of deposit of the entire decretal amount in court pending hearing the matter and determination.

After a span of time of haggling between the two (2) Advocates above, they sought court to make a decision on security issue and meanwhile grant leave to file appeal out of time.

Thus the court directed that the appeal be lodged within 7 days and that ruling on security to be delivered on 06/05/2021 at 10.00am.

Under **Order 42 Rule 2 (b) Civil Procedure Code**, security availed pending appeal is for due performance of decree or order as may ultimately be binding an Applicant.

In the case of **Mwaura Karuga T/A Limit Enterprises vs KBS Ltd & 4 Others (2015) eKLR** held that;

“The security must be one which might ultimately be binding an Applicant. The Rule does not envisage any just any security. The word “ultimately be binding” are deliberately used and are useful here, for refer to entire decree as will be payable at the time the appeal is lost. That is the presumption of the law here..... The security to be given is measured on that yardstick.”

Relying on the aforesaid authorities, I am persuaded that the security is to be ordered to cover the entire decretal amount.

Thus the court makes the following orders;

1. The Applicant shall deposit Kshs. 8,115,792/- in court or interest earning account of parties Advocate within 30 days. In alternative a bond or bank guarantee be deposited in court within 30 days, in default execution to proceed.

2. The trial court file be availed to this court for expeditious hearing of the appeal.

Dated, Signed and Delivered at NYAHURURU this 6th day of May, 2021.

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CHARLES KARIUKI

JUDGE

PRESENT:

Matiri for Applicant

Opondo for Respondent

Court Assistant – Eric