

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CIVIL APPEAL NO. 17 OF 2021

GREAT RIFT EXPRESS SHUTTLE SERVICES.....APPELLANT/APPLICANT

VERSUS

WANDERA MUBAKA AMANDO.....RESPONDENT

RULING

The Applicant seeks to stay further proceedings before the trial Magistrate's court pending the hearing and determination of the appeal that has been filed. The Appeal lodged challenges interlocutory decisions made within the trial process. The Applicant is aggrieved that it was denied the opportunity to properly ventilate its case before the trial Magistrate Court. From available anecdotal evidence, it is clear that the Applicant's sense of grievance may have some justification. However, from the submission made, it is evident that so much water has passed under the bridge. The case has been concluded and is pending delivery of judgment. This court is of the considered view that the issues that the Applicant intends to raise in the interlocutory appeal may properly be raised and argued in the substantive appeal, if the Applicant will be not be satisfied with the judgment and decree of the trial Magistrate's court.

As for additional evidence, there is a procedure under the Civil Procedure Act and Rules made thereunder that allow the production of additional evidence on appeal should the Applicant desire to produce further medical evidence. That being the case, tis court is of the opinion that the Applicant should await the delivery of the judgment by the trial magistrate's court so that it can rise all the issues, including those that arose during the course of the trial, in the substantive appeal, if it is so minded to file an appeal, and if the decision is rendered against it.

For the above reasons, the application cannot be allowed. It is hereby dismissed with costs to the Respondent.

DATED at KITALE this 3rd day of June 2021.

L. KIMARU

JUDGE