

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

CIVIL APPEAL NO. E040 OF 2021

DAMARIS OMWOYO.....APPELLANT/APPLICANT

VERSUS

NANCY KEMUNTO.....RESPONDENT

{Being an Appeal against the Judgement of Hon. W. C. Waswa (Mr.) – RM Nyamira dated and delivered on the 10th day of May 2021 in the original Nyamira Chief Magistrate’s Court Civil Case No. 8 of 2020}

RULING

The appellant/applicant has by the Notice of Motion dated 7th June 2021 filed herein on 9th June 2021 sought a stay of execution of the decree in Nyamira CMCC No. 8 of 2020 pending hearing and determination of this appeal. Whereas the application is vehemently opposed I have considered the grounds thereof, the supporting and replying affidavits, the rival submissions of Counsel for the parties and the law and I am inclined to allow it. It is my finding that the appellant/applicant has met all the conditions for grant of a stay set out in **Order 42 Rule 6 of the Civil Procedure Rules**. The appellant/applicant has demonstrated that she is likely to suffer substantial loss should this application be refused and the appeal succeeds. She has demonstrated that the respondent may not be in a position to refund the decretal sum in the event the appeal succeeds. Secondly, the application has been made timeously as I do not consider a delay of one month inordinate in the circumstances of the case. Further, the applicant has expressed willingness to deposit security. In the premises **the application is granted but on condition that the appellant/applicant shall within twenty-one (21) days of this order deposit the entire decretal sum (not the insurer’s bank guarantee) either in court or in an interest earning account in the joint names of the advocates for the parties.** Secondly, **the advocate for the appellant shall within the same period file and serve the record of appeal.** It is so ordered.

Ruling signed, dated and delivered electronically in Nyamira on this 8th day of July 2021.

E. N. MAINA

JUDGE