



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HCCA NO. E002 OF 2021

MASH EAST AFRICA.....1ST APPLICANT/APPELLANT

KHAMIS ABDULRAHIM MOHAMMED.....2ND APPLICANT/ APPELLANT

-VERSUS-

STEPHEN KYALO.....RESPONDENT

RULING

1. Before me is an application dated 27th January 2021 brought by way of Notice of Motion, seeking stay of execution of the judgment delivered against the applicant/appellant on 18/12/2020 in PMCC No. 154 of 2019 - Kilungu pending hearing and determination of the appeal.
2. The application has grounds on the face of the Notice of Motion and is supported by the affidavit sworn on 27th January 2021 by Geoffrey Kilonzo.
3. The application is opposed and a replying affidavit sworn by Stephen Kyalo on 5th February 2021 was filed in this regard.
4. Parties' counsel filed written submissions to the application, which I have perused and considered.
5. Such applications for stay of executions of judgment or decrees are governed by the provisions of Order 42 Rule 6 of the Civil Procedure Rules – the relevant part of which states as follows –

6(2) No order for stay of execution shall be made under subrule

(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. I note that the decision of the trial court herein sought to be stayed was made on 18/12/2020, and this application filed on 29/01/2021 slightly more than one month later and an appeal had been filed earlier on 13/01/2021. In my view, there was no inordinate delay in bringing the present application for stay.
7. Will the applicant suffer substantial loss if the stay orders sought are not granted? Having perused the grounds of appeal, the major contention is the quantum of damages not liability. I will thus grant stay but order that the applicant will pay part of the decree amount.
8. With regard to provision of security, the amount that this court will order to be paid by the applicant as condition for the stay, will operate as security.
9. Consequently, I allow the application and grant stay of execution of judgment or decree pending appeal on the following conditions –

(i) The applicant will pay the respondent the amount of Kshs.100,000/= as part of the decretal amount, within the next 30 days from today.

(ii) If the above amount is not paid within 30 days as ordered, the stay of execution hereby granted will automatically lapse.

(iii) Costs of the application will follow the decision in the appeal

DELIVERED, SIGNED & DATED THIS 21ST DAY OF JULY, 2021, IN OPEN COURT AT MAKUENI.

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GEORGE DULU

JUDGE