



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HCCA NO. 10 OF 2020

THE REGISTERED TRUSTEES OF AFRICA INLAND

CHURCH KENYA.....APPLICANT/APPELLANT

VERSUS

VICTORIA KAMENE MUSYOKA aka SUSAN MUIA.....RESPONDENT

RULING

1. Before me is an application by way of Notice of Motion dated 24/09/2020 seeking several orders, some of which have been spent, as follows –

1) (Spent)

2) (Spent)

3) (Spent)

4) *There be a stay of execution of the judgment and decree of the Senior Resident Magistrates' court issued on 6th February 2020 in Tawa SRMCC No. 217 of 2016 Victoria Kamene Musyoka –vs- The Registered Trustees Africa Inland Church Kenya pending the hearing and determination of the appeal herein.*

5) *That costs of this application be in the cause.*

2. The application was filed with a supporting affidavit sworn on 24th September 2020 by Erastus M. Mbaka the Legal Officer of C.I.C General Insurance Co. Ltd.

3. The application proceeded by way of filing written submissions. I have perused and considered the written submissions of both the applicant and the respondent. I note that the initial stay of execution orders granted by the trial court lapsed on 09/03/2020.

4. This being an application for stay of execution of judgment or decree, it is 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 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.*

5. It is also trite that courts have a wide discretion to grant stay of execution orders. In this regard, in **Butt –vs- Rent Restrictions Tribunal [1979] eKLR** the court described the power of the court in such applications to be as follows –

“The power of the court to grant or refuse an application for stay of execution is a discretionary power. The court in exercising

its discretion whether to grant or refuse an application for stay, will consider special circumstances of the case.”

6. The appeal herein was filed on 5th March 2020 and this application was filed on 24/09/2020. On the face of it, there appears to be a delay, but the applicant had actually asked for and obtained initial stay orders from the trial court. In those circumstances I give the applicant the benefit of doubt on the issue of delay, and find that there was no unreasonable delay in filing their application.

7. Will the applicant suffer substantial loss if stay of execution is not granted? The main contention of the applicant is that the respondent will not be able to repay the decretal amount if the appeal succeeds, thus the appeal will be rendered nugatory if stay orders are not granted.

8. I note that from the grounds of appeal, the issue in contest is the quantum of damages awarded and not liability as such. Thus though I find that the applicant is likely to suffer substantial loss if stay orders are not granted, I will grant stay but subject to the applicant paying part of the decretal amount. That amount will also satisfy the requirements of provision of security by the applicant as required by the rules.

9. I thus allow the application and grant stay of execution of decree or judgment herein pending appeal, on the following conditions –

i. The applicant will pay the respondent part of the decretal amount of Kshs.150,000/= within 30 days from today’s date.

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

iii. Costs will follow the decision in the appeal.

Delivered, signed & dated this 22nd day of July, 2021, in open court at Makueni.

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GEORGE DULU

JUDGE