



**Adhiambo v Ouma (Income Tax Appeal E132 of 2020)
[2021] KEHC 145 (KLR) (Commercial and Tax) (7 October 2021) (Ruling)**

Neutral citation: [2021] KEHC 145 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INCOME TAX APPEAL E132 OF 2020**

F TUIYOTT, J

OCTOBER 7, 2021

BETWEEN

BERYL HARRIET ADHIAMBO APPLICANT

AND

WILLIAM OGEDA OUMA RESPONDENT

RULING

1. Before Court is a Notice of Motion dated 16th November 2020 seeking stay of execution of the Judgment and Decree in Chief Magistrate Civil Suit No. 4415 of 2019 (William Ogeda Ouma vs Beryl Harriet Achieng) pending the hearing and determination of this Appeal.
2. The Applicant states that she was surprised by the Decree as she was not served with pleadings. She then filed an application for stay of execution before the trial Court on 14th October 2020. That application was given a hearing date of 28th November 2020. She must have thought that day to be too far and so filed a second application on 13th November 2020. The trial Court refused to certify that application as urgent and hence this Appeal. An Appeal, not against the main decree, but the directions of the Court on 13th November 2020. And that would be understandable because there is pending an application for setting aside the exparte judgment.
3. I have listened to both sides. I think that an order that endears itself to this Court is for the lower Court to determine the application that is pending before it. And so this Court shall make an order remitting this matter back to the trial Court for hearing and determination of the said application. The Application to be heard on priority basis and in any event not less than 60 days from today. There shall be stay of execution pending the hearing and determination of the said application on condition the Applicant shall furnish security equivalent to the principle sum of Kshs.1,760,000/= within 60 days of this ruling.



4. Costs of the application dated 16th November 2020 to abide by the outcome of the lower Court application.

Dated and Signed this 29th Day of September 2021

F. TUIYOTT

JUDGE

Dated and Delivered at Nairobi this 7th Day of October 2021

A. MABEYA, FCI Arb

JUDGE

