

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

HIGH COURT CIVIL APPEAL NO. E 127 OF 2021

From the original civil suit (Maua) E020 of 2020

H. KHALIF.....APPLICANT

VERSUS

ISAAC M'IMARIA M'KIREA & ZIPPORAH MUKOMUNENE NTUNDU

(Suing as legal representative of the estate of Jacob Mwiti M'Imaria)...RESPONDENT

RULING

1. Both parties appreciate the need to balance the rights of a successful litigant to access the decretal sum against that of the appellant to access justice and be heard and after the hearing the outcome should not be merely academic. They agree stay need be given but on terms.
2. The difference however, is what conditions to be imposed. While the appellant says that the entire sum be deposited, the respondent says a portion of 2/3 be released to the respondent even as the other 1/3 gets deposited. That position is taken on the basis that the trial the appellant submitted that liability be apportioned at 40%:60% in favour of the appellant.
3. Terms to be imposed as conditions for stay are at the discretion of the court. Where it is not the case of an appellant that the respondent is not entitled to any part of the decree, it would be unjust to keep the respondent away from the entire decretal sum. In the context and circumstances of this matter, I direct that a portion of the decree being 40% of the damages (general and special), plus the costs of the suit at trial, be paid out to the respondent while the balance of 60% of the damages be deposited into an escrow account in the joint names of the advocates for the parties.
4. I direct that the deposit and payment be made within 45 days from today and in addition, the appellant shall file and serve Record of Appeal and written submissions within 60 days from today, to enable the respondent also file and serve submissions within 30 days after service.
5. Time shall be of essence and therefore if there shall be default to effect payment and deposit as ordered the stay herein granted shall stand discharged but if the default shall be on filing the Record of Appeal and submissions, the appeal itself shall stand dismissed.
6. Mention on 2/12/2021 to confirm compliance and for further orders.
7. This appeal is now deemed admitted and directions issued.

DATED, SIGNED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 5TH DAY OF OCTOBER, 2021

Patrick J.O Otieno

Judge