



REPUBLIC OF KENYA

IN THE HIGH COURT AT BUNGOMA

MISCELLANEOUS CIVIL APPLICATION NO. E004 OF 2021

NELSON N. NDENGWA.....APPLICANT

VERSUS

ISSA MAKOKHA MISIKO

(suing as the Adm. & legal Rep in the Estate of

JACOB OPANDA MAKOKHA (deceased).....RESPONDENT

RULING

This is a notice of motion dated 29.1.2021 by the applicant **NELSON NDEGWA** against the Respondent **ISSA MAKOKHA MISIKHO** suing as administrator of the estate of **JACOB OPANDA MAKOKHA** (deceased) seeking

1. *Spent*

2. *Spent*

3. *Spent*

4. *That this honourable court be pleased to grant stay of execution of the Judgment and/or decree in Bungoma CMCC No. 478 of 2015 pending hearing and determination of the intended Appeal.*

The grounds for the application are that:

a) That the Applicant being aggrieved with the decision of this Honourable court intends to file an appeal against the judgment of the trial magistrate delivered on 1st December, 2020.

b) That the Applicant contends the liability and quantum awarded was excessive and should execution proceed the Applicant stand to suffer irreparable loss and prejudice as the ability of the plaintiff herein to refund the decretal amount is unknown.

c) That the intended appeal raises triable issues and unless the proceedings herein are stayed this suit stands to be rendered nugatory.

d) That the intended appeal is meritorious with high chances of success.

e) That the Applicant's insurance is ready, willing and able to provide a bank guarantee form Diamond Trust Bank equal to the due performance of the decree, as security pending the hearing and determination of the appeal.

The application is supported by the affidavit of Kelvin Ngare the legal officer of Direct line Assurance Company, the insurance of motor vehicle Reg. No. KBG 535 V the motor vehicle from which this claims arises. He reiterates the grounds of the application.

Mr. Mukisu for the Respondent did not oppose the application for stay but insisted that the applicant do deposit ½ of the decretal amount in an interest earning account in account of both advocates and the costs be paid in its entirety. By directions of this court, this application was canvassed by way of written submissions. Both parties filed.

I have considered the submissions by counsel. The respondents are not opposing the application for stay but propose that same be granted on condition. The applicant in para 14 of the supporting affidavit have declared their willingness to provide a bank guarantee from Diamond

Trust Bank to the amount of the decree.

I therefore allow the application for stay of execution on the following conditions.

1. That the applicant do execute a bank guarantee for the whole decretal sum and costs within 30 days.
2. Bank guarantee is not executed within 30 days from today's date the stay of execution will lapse.

DATED AT BUNGOMA THIS 16TH OF NOVEMBER, 2021.

S.N RIECHI

JUDGE