



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KIAMBU**

**CIVIL APPEAL NO. E139 OF 2021**

**BETWEEN**

**PETER MAINA NDUNGU.....APPELLANT**

**VERSUS**

**DAMARIS WANJIKU MAINA.....RESPONDENT**

**RULING**

1. **PETER MAINA NDUNGU (Peter)**, being aggrieved by the judgment delivered on 7<sup>th</sup> July, 2021 in Limuru Magistrate's **Court Civil Case No. 48 of 2018** filed this appeal. By the chamber summons application dated 16<sup>th</sup> August, 2021, Peter sought to stay execution of that Limuru Magistrate's court's judgment pending the hearing and determination of this appeal. Peter, by his affidavit in support of the application, prayed that the court do accept as security for stay of execution a bank guarantee by **Diamond Trust Bank** to be issued to Peter's insurance, **Directline Assurance Company Limited**.

2. **DAMARIS WANJIKU MAINA (Damari)** does not oppose the application for stay of execution of the judgment of Limuru Court but prays that the court do order that the condition for that stay of execution be that Peter does provide the decretal sum to be deposited in a joint interest earning account.

3. Since parties were unable to agree on what the terms of stay of execution should be issued, they requested this Court to determine that one issue, that is, what ought to be the condition for stay of execution.

**ANALYSIS**

4. I have perused the letter written by **Diamond Trust Bank** to **Directline Assurance Company Limited** and dated 6<sup>th</sup> November, 2020. What is significant to note is that the undertaking to issue a Bank guarantee, in that letter, is an undertaking to guarantee **Directline Assurance Company Limited**. Directline, however is not a party to the action for which stay of execution is sought. It follows therefore that, even if the guarantee is issued, it would only cover the liability of Directline and not liability of Peter, hereof.

5. Further, and perhaps more importantly, is that the proposed guarantee to Directline is valid for 12 month from 6<sup>th</sup> November, 2020. It follows that such a guarantee will be invalid up to 5<sup>th</sup> November, 2021, that is tomorrow.

6. It is because of the above finding that I will order Peter to provide an alternative security for the due performance of the decree of the Limuru Magistrate's Court.

**DISPOSITION**

7. In respect to the issue left by the parties to the court to determine in respect to the chamber summons dated 16<sup>th</sup> August, 2021, I make the following orders:-

(a) There shall be stay of execution of the **SPMCC Limuru No. 48 of 2018** on condition that the appellant does provide the decretal sum within 30 days from today to be deposited into an interest earning account in the joint names of both law firms of the parties hereof.

(b) The costs of the chamber summons dated 16<sup>th</sup> August, 2021 shall abide with the outcome of this appeal.

***RULING DATED and DELIVERED at KIAMBU this 4<sup>th</sup> day of NOVEMBER, 2021.***

**MARY KASANGO**

**JUDGE**

Coram:

Court Assistant: Nancy

For the Appellant: No appearance

For the Respondent: Mr. Mwangi

**COURT**

Ruling delivered virtually.

**MARY KASANGO**

**JUDGE**