



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL APPEAL CASE NO. 12 OF 2018

KENYA BUS SERVICES LIMITED.....1ST APPELLANT

KARANJA KABAGE2ND APPELLANT

SAMUEL KIMUCHU GICHURU.....3RD APPELLANT

EDWIN MUKABANA MASSIMBA.....4TH APPELLANT

STANLEY MURAGE.....5TH APPELLANT

-VERSUS-

MWAURA KARUGA T/A LIMIT ENTERPRISES...RESPONDENT

(Being an appeal from the Ruling and order of the Deputy Registrar Hon. D. W. Nyambu

delivered on 7th October 2014 in Nairobi HCCC No.106 of 2005)

RULING

1. By this court's judgment of **30th May 2019** the appellant's appeal succeeded to the effect that, in that judgement, this court found the deputy registrar of this court erred to find the directors of the 1st appellant, **Kenya Bus Services Limited**, were personally liable for the debts of the 1st appellant.
2. **Mwaura Karuga**, the respondent, was aggrieved by that judgment and has filed an appeal in the court of appeal. The respondent seeks stay of execution pending that appeal.
3. Although the respondent seeks stay of execution of the order of 30th May 2019, what in fact he seeks is stay of the release of money deposited in the joint interest earning account, during the hearing of this appeal. Now that the appeal was heard and determined that amount is liable to be released.
4. Although I find that what the respondent seeks is to restrain the appellants from accessing the money deposited in the parties joint account, I am in agreement with the submissions of the appellants that the respondent needed to show what substantial loss he will suffer if stay was not granted. This is in keeping with the provisions of **Order 42 Rule 6 (2) of the Civil Procedure Rules** which state:

“No order for stay of execution shall be made under subrule (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. The respondent, in my view, did show he would suffer substantial loss if stay is not granted. This is because, as he stated and it is in the public domain, the Kenya Bus Services Limited is no longer operating and therefore if the funds are released, to the appellants, from the joint account, and if the respondent's appeal does succeed, there is no assurance that the 1st appellant, which is not operating, will be able to refund that money to the respondent.

6. **Order 42 Rule 6 (2)** requires a party seeking to stay a judgment, pending appeal, to provide security. In my view the deposit held in the joint account is sufficient security, in this regard.

7. On the whole I find merit in the respondent's application. Accordingly, the **Notice of Motion** dated **7th June 2019** is granted to the effect that there shall be stay of the release of the funds held in the joint account of the parties pending appeal. The costs of the **Notice of Motion** dated **7th June 2019** shall abide with the outcome of the appeal.

DATED, SIGNED and DELIVERED at NAIROBI this 6th day of MAY, 2020.

MARY KASANGO

JUDGE

ORDER

In view of the measures restricting court operations due to the **COVID-19 pandemic** and in light of the Gazette Notice No 3137 of 17th April 2020 and further parties having been notified of the virtual delivery of this decision, this decision is hereby virtually delivered this **6th** day of **May, 2020**.

MARY KASANGO

JUDGE