



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 71 OF 2020

CAR AND GENERAL (TRADING) LIMITED.....APPELLANT/APPLICANT

-VERSUS-

MARION WAIRIMU MURIITHI & VIRGIONA WACHEKE

MURIITHI Suing as the administrators of the Estate of

MONICA WANGECI MUREITHI(Deceased).....1ST RESPONDENT

PETER NJERU.....2ND RESPONDENT

RULING

1) The subject matter of this ruling is the motion dated 4th March 2020 in which **Car and General (Trading) Ltd**, the appellant herein, sought for inter alia, an order for stay of execution pending appeal. The motion is supported by the affidavit of Joseph Mulwa Mwambi, the appellant's logistics coordinator. The motion was electronically served upon the respondents who did not deem it fit to file a response nor written submissions as directed by the court, therefore the motion remains unopposed.

2) I have considered the grounds stated on the face of the motion plus the facts deponed in the supporting affidavit. I have also considered the written submissions filed by the appellant together with the cited authorities. It is the submission of the appellant that it should be given a temporary order for stay of execution pending appeal to maintain the status quo. It is stated that on 10.2.2020 judgment was entered in favour of the respondents and against the appellant in the sum of ksh.2,511,275/= plus interest and cost by the trial court.

3) The appellant has now preferred this appeal to challenge the decision of the trial court. It is the argument of the appellant that unless the order is given it may suffer substantial loss in that if the decretal amount is paid to the respondents, it will be extremely difficult to recover the same since the respondents are not in a position to refund the amount. It is argued that the respondents have no known assets nor financial capacity to make a refund should the appeal turn successful.

4) The principles to be considered in determining an application for stay are well settled. **First**, the application for stay should be timeously filed. In this case, the trial court pronounced its judgment on 10th February 2020 and the application for stay was filed on 4th March 2020. I am convinced that the application for stay was filed without unreasonable delay.

5) The **second** principle is that the applicant must show that it would suffer substantial loss if the order for stay is denied. The appellant has stated that the respondents have no known assets nor finances to make a refund

at the conclusion of the appeal if they are now paid. I am satisfied that the appellant has shown the substantial loss it would suffer if the order for stay is declined.

6) The **final** principle is the provision for security for the due performance of the decree. The appellant has beseeched this court to grant it an unconditional order for stay due to the current Covid 19 Pandemic since the award of the judgment is a huge amount hence its businesses may be negatively affected if it is ordered to make a cash deposit.

7) Having considered the material placed before me, it is clear in my mind that this is a clear case where security for the due performance of the decree is necessary to be provided for. However, the type of security to be provided should not always be monetary. The appellant/applicant has clearly stated that if it is ordered to provide cash deposit its business may be negatively affected.

8) I grant the appellant an order for stay on condition that the appellant/applicant provides either a **bankers guarantee** or an **insurance bond** covering the decretal sum of ksh.2,511,275/= as security for the due performance of the decree within 45 days from the date hereof. In default the motion will be treated as having been dismissed. Costs of the motion to abide the outcome of the appeal.

Dated, Signed and Delivered virtually via Microsoft Teams at Nairobi this 10th day of July, 2020.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent