



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAKURU**

**MISCELLENOUS APPLICATON NO. 62 OF 2020**

**MATUNDA (FRUITS) BUS SERVICE LTD.....1<sup>ST</sup> APPLICANT**

**NAIROBI BUS.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**VINCENT AGIK OMODI.....RESPONDENT**

**CONSOLIDATED WITH**

**MISCELLENOUS APPLICATION NO. 64 OF 2020**

**MATUNDA (FRUITS) BUS SERVICES LTD.....1<sup>ST</sup> APPLICANT**

**NAIROBI BUS.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**IAO( A minor suing through her father and next friend)EOO..RESPONDENT**

**RULING**

1. Judgment in the above cases was delivered on the 5<sup>th</sup> March 2020 in Molo **CMCC Nos.233 OF 2018 and CMCC NO. 232 of 2018** respectfully in favour of the Respondents.

The trial court granted a 30 days stay of execution which lapsed on the 5<sup>th</sup> April 2020 in the midst of the Covid-19 Virus Pandemic that forced scaling down of all court operations from the 17<sup>th</sup> March 2020.

2. The Applicants were dissatisfied with the trial court's awards on quantum of damages, and due to the closure/scaling down of court operations, they were unable to file the necessary Memorandums of appeal within the Statutory period.

3. By an **Application by Notice of Motion dated 14<sup>th</sup> May 2020**, brought under the **Provisions of Order 42 rule 1,2 & 6 of the Civil Procedure Rules and Sections 3, 3A & 79G of the Act**, the Applicants seek **ORDERS:**

**1) Spent**

**2) Spent**

**3) Spent**

**4) That the court be pleased to Order a stay of execution of the judgment in Molo CMCC NO.233 of 2018 delivered on the 5/3/2020 pending the hearing and determination of the Applicants Intended Appeal.**

**5) That the Honourable Court be pleased to grant the Applicants leave to file a Memorandum of Appeal as per the attached draft against the decision and judgment delivered on the 5<sup>th</sup> March, 2020.**

4. The application is supported by grounds stated at the body of the application and an affidavit of one Isabella Nyambura, a legal Officer of

the Insurer of the accident Motor Vehicle KBZ 841F.

5. In opposing the application, the Respondents swore Replying affidavits on the 5<sup>th</sup> June 2020.

I have considered the applicants reasons for the application, and the respondent objections thereto.

6. It is not in dispute that soon after delivery of the judgments, the country was visited by the Corona-Virus Pandemic, forcing closer and or scaling down of all court operations.

In particular, Nakuru Law Courts were closed on the 17<sup>th</sup> March 2020, and only partially re-opened later after in June 2020, when e-filing was introduced in the courts.

7. During the period, it was not practically possible to file any court documents. As averred by the applicants, they were caught up in the confusion.

I cannot blame them for any laxity. When e-filing was introduced, the applicants took the advantage and filed this application on the 14<sup>th</sup> May 2020. This in my view was not inordinate delay as explanations have been offered; which is acceptable to the court.

8. It is noted that the applicants are ready to deposit half of the Decretal Sums in court as security for the due performance of the decree, hearing and determination of the intended appeal.

The court is minded that the intended Appeal is against the award of damages, as being excessive only.

9. **Liability** is not in issue.

In Molo CMCC NO. 233/2018, a sum of Kshs.350,000/= was awarded to the Respondent in General damages, while in Molo CMCC NO.232/2018, the respondent was awarded Kshs.150,000/=.

#### 10. **ORDERS**

**1) The Applicants in both applications are granted leave to file a Memorandum of Appeal and serve within 15 days of this ruling (Prayer No.5).**

**2) Orders of Stay of execution of the judgments in Molo CMCC NO.233/2018 and Molo CMCC NO.232/2018 delivered on the 5<sup>th</sup> March 2020 are hereby granted pending hearing and determination of the Intended Appeals, on Condition;**

**3) That the applicants shall pay 50% of the decretal sums in each of the two judgments to the Respondents within 30 days of this ruling.**

**4) That the balance of the decretal sums, being 50%, shall be deposited in a joint interest earning bank account, in the parties advocates names within 60 days of this ruling, to await hearing and determination of the intended appeals.**

**5) If there is default by the applicants on (3) and (4) above, the orders of stay shall lapse, and the Respondents shall be at liberty to execute the decrees.**

**6) Each party to bear own costs on the application.**

**DELIVERED, SIGNED AND DATED ELECTRONICALLY AT KERUGOYA THIS 15<sup>TH</sup> DAY OF OCTOBER 2020.**

**J.N MULWA**

**HIGH COURT JUDGE.**

#### **ADVOCATES:**

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**NAIROBI**