



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**MISC. CAUSE NO. 122 OF 2019**

**SELEMAN KOOLA DOSHO.....PLAINTIFF**

**VERSUS**

**1. NELSON NJENGA MUNENE**

**2. DIANI SMOOTH TRANSPORTERS**

**3. OGOLLA JACOB**

**4. KIMANI JOSEPH.....DEFENDANTS**

**R U L I N G**

1. Having heard the counsel from both parties, it is common ground that there is a sum, part of the judgment, which is not in dispute and will not be subject of the appeal to be filed.

2. The Respondent counsel says that if the undisputed sum is paid to her client she concedes to the time being extended and stay being granted on conditions that the disputed sum is kept in an escrow account. The Applicant on the other side says their only ground of appeal turns upon the choice of a multiplicand adopted by the trial court.

3. I have given due regard to the submissions of the parties and I take the view that the court ought not to be engaged on a non-disputed matter. Accordingly therefore I make the following orders:-

**i. Time is extended for the Applicant to file an appeal. That be done within 7 days from today. The Respondent equally get the leave to file a cross appeal within the same period.**

**ii. Since the entitlement of the respondent to the sum of Kshs.2,418,289 is not dispute, it would serve no interest of justice for the said sum to be kept away from the Respondent. Let that sum be paid out within 30 days from today.**

4. I hesitate to make an order for the payment of costs and interests just now because I have not been told if the same have been assessed or agreed on. Instead I direct that the disputed sum of Kshs.613,653/= plus costs and interests be kept into an escrow account in the joint names of the Advocates for the parties. The deposit be made within 30 days from today. On those terms I grant stay pending the filing and determination of the intended appeal.

5. In the event that the payment to the Respondent is not made or if it is the deposit which is not effected in the sum and within the time ordered the stay I have granted herein shall lapse and the Respondent shall be at liberty to execute for the entire sum awarded at trial.

6. Costs in the cause.

**Dated and delivered at Mombasa this 13<sup>th</sup> day of March 2019.**

**P.J.O. OTIENO**

**JUDGE**