



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL APPEAL NO. 497 OF 2018**

**JOHN CHEGE.....APPELLANT/APPLICANT**

**VERSUS**

**ALEX ROY OLEMBO.....1<sup>ST</sup> RESPONDENT**

**STEPHEN OWINO.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The appellant/applicant herein has taken out the Notice of Motion dated 9<sup>th</sup> May, 2019 which supported by grounds set out on the face of the motion and the facts deponed in the affidavit sworn by the applicant. The order being sought is for an order for stay of execution of the judgment delivered on 18<sup>th</sup> September, 2018 by the Honourable Senior Principal Magistrate E.K. Usui, (Senior Principal Magistrate under Order 42, Rule 6 (2) of the Civil Procedure Rules.
2. The Motion is opposed by the respondents who filed the replying affidavit sworn by the 2<sup>nd</sup> respondent.
3. At the hearing the parties made oral submissions restricted to the provision of security for the due performance of the decree, which is the sole condition for stay that remained unsettled.
4. *Mr. Gichuki*, learned advocate for the applicant made a proposition to provide security for the decretal sum of Kshs.324,048/= of a bank guarantee within 21 days. *Mr. Osodo*, learned advocate holding brief for *Mr. Owino*, learned counsel for the respondents, stated that the decretal sum be deposited in an interest earning account as opposed to a bank guarantee.
5. I have considered the propositions made by the learned advocates. The record shows that the respondents instituted a suit against the appellant in 2013, seeking to be paid a sum of Kshs.324,048/= for damages occasioned to their motor vehicle registration number KBN 005P as a result of the appellant’s negligent driving of his motor vehicle registration number KAN 487M.
6. The appellant filed his statement of defence and the matter proceeded for hearing. Eventually, the trial court entered judgment in favour of the respondents in the sum of Kshs.324,048/= together with costs and interest thereon.
7. Having established the background of the matter, it is important to state at this juncture that the court has unfettered discretion to determine the most appropriate mode of provision of security for the due performance of the decree to be provided.
8. In this appeal the parties are unable to agree on the nature of the security to be given. Having
9. Having weighed the two proposal I am convinced that the proposal to provide a bank guarantee is reasonable and appropriate.
10. I grant the order for stay of execution pending appeal on condition that the appellant/applicant provides a bank guarantee for the decretal sum of ksh.324,048/= from a reputable bank within 30 days from today, failure to which the order for stay shall lapse. There shall be no order on costs.

**Dated, Signed and Delivered at Nairobi this 12<sup>th</sup> day of July, 2019.**

.....

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Appellant/Applicant

..... for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents