

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CIVIL APPEAL NO 84 OF 2014

1. JAMES MARTIN MWANGI

2.DAVID KIHORO.....APPELLANTS

VERSUS

1. ALICE MUTHONI THIONGO

2. DOUGLAS MAINA THIONGO.....RESPONDENTS

R U L I N G

1. The Appellants herein were the defendants in the lower court. They appealed against the money decree passed against them on 15/09/2014. The appeal was filed on 14/10/2014 - at the very last moment. The cause of action was in negligence.

2. The Appellants have now sought, by **notice of motion dated 20th and filed on 21st April 2015**, stay of execution of the decree pending disposal of the appeal. The application is opposed by the Respondents (who were the plaintiffs before the trial court).

3. I have read the supporting and replying affidavits. I have also given due consideration to the submissions of the learned counsels appearing. No authorities were cited.

4. An applicant for stay of execution of decree must apply without **unreasonable delay**. He must also demonstrate that he stands to suffer **substantial loss** unless the stay sought is granted. Finally he must be prepared to give **security** as the court might order.

Delay

5. This application was filed over two months after judgment was passed and over one month after the appeal was filed. Normally a judgment-debtor who intends to appeal will orally seek interim stay of execution immediately after judgment is passed pending the filing of a formal application. If he does not so apply he will apply at the time that he lodges his appeal. It was not the case here. That notwithstanding, I do not find that there was unreasonable delay here.

Substantial Loss

6. I have perused the memorandum of appeal herein. The first four grounds attack **quantum of damages**. Only the last four grounds concern **liability**. It is clear that liability will not be a serious issue in this appeal. In any event, it is common ground that the 1st Appellant, who was the driver of the motor vehicle involved in the accident was convicted upon his own plea of the criminal offence of causing death by dangerous driving. He did not appeal against the conviction. **Section 47A of the Evidence Act, Cap 80** must thus come into play.

7. That being the case, the appeal will in reality be on quantum only. Without appearing to pre-judge the appeal, it has not been demonstrated in this application that the award made by the trial court was so inordinately high that it is likely to be drastically reduced when the appeal is heard. In any event, it has not been demonstrated that should the appeal succeed the Appellants will be unable to recover, or have

undue difficulty in recovering, the proportion of the decretal sum by which the judgment in the appeal may reduce the award. A mere statement that the Appellants are admittedly poor is not proper evidence of the same.

8. I note that the Appellants were prepared to give security as the court might order. But in the event I do not find any merit in this application. The same is dismissed with costs to the Respondents. The interim stay of execution now in place is hereby vacated. It is so ordered.

DATED, SIGNED AND PRONOUNCED IN OPEN COURT AT MURANG'A THIS 5TH DAY OF JUNE 2015

H. P. G. WAWERU

JUDGE