



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. 111 OF 2014**

**GILBERT MOKUA BITANGE.....APPELLANT**

**VERSUS**

**GODFREY KINYUA MURIITI.....RESPONDENT**

**RULING**

- 1). The application dated 31-7-2014 seeks orders that there be a temporary stay of execution of the decree issued in Kajiado RMCC No. 118 of 2007 pending the hearing and determination of this appeal.
- 2). It is stated in the affidavit in support that the judgment of the lower court was delivered on 20-6-2014. That liability was agreed upon by the parties and the court assessed the general damages at 750,000/=, special damages of Kshs. 62,105/= plus costs and interest.
- 3). The applicant's contention is that the said award is excessive, hence the appeal herein. The applicant is apprehensive that the respondent will commence execution proceedings thereby rendering this appeal nugatory. According to the applicant, the respondent is unlikely to refund the decretal sum in the event that the appeal is successful. The applicant is ready and willing to give security for the due performance of the decree.
- 4). The application is opposed. It is averred in the verifying affidavit that the assessment of damages by the court was reasonable and commensurate with the injuries sustained. The respondent's stand is that the application is meant to deny him the enjoyment of the fruits of his judgment. That there is no irreparable damage that will be suffered by the applicant if the application is not allowed. The applicant stated that liability was by consent and the applicant should now pay up.
- 5). The application was argued by way of written submission which I have duly considered.
- 6). Under Order 42 6 (2) states:  
  
**"No order for stay of execution shall be made under sub rule (1) unless:**
  - a) **The court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without reasonable delay and,**
  - b) **Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant"**.
- 7). The application herein was filed timeously. There are no allegations of delay. The appeal was filed within ten days of the delivery of the judgment. The application at hand was filed within less than two months following the delivery of the judgment.
- 8). The judgment on liability was entered by the consent of the parties. The applicant's contention is that the award of general damages is excessive. To balance the interest of both parties, the respondent should enjoy some of the fruits of the judgment.
- 9). With the foregoing, I allow the application on the condition that the applicant do release the respondent 50% of the decretal sum and deposit the balance in court or an interest earning bank account

of both parties herein within 45 days from the date hereof. In default execution to issue.

**Dated, signed and delivered at Machakos this 2<sup>nd</sup> day of December, 2015.**

**B. THURANIRA JADEN**

**JUDGE**