

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: AKIWUMI, TUNOI & O'KUBASU, JJ.A.)
CIVIL APPLICATION NO. NAI. 53 OF 2000 (24/00 UR)
BETWEEN

1. EXPRESS KENYA LIMITED
2. ALI BAKARI ALIAPPLICANTS
AND
M. M. J. KISOSORESPONDENT

(An application for stay of Execution in an intended
Appeal from a Judgment of the High Court of Kenya at
Nairobi (Justice Hayanga) dated 21st December, 1999

in
H.C.C.C. NO. 2865 OF 1993)

RULING OF THE COURT

We are not convinced that the respondent is a man of straw who would if the appellant's appeal succeeds, not be able to disgorge what has been paid to him. He also in his replying affidavit does not seem to mind if the decretal sum is deposited in the joint names of his advocate and that of the applicant, pending the disposal of the intended appeal.

We also bear in mind that some claims for special damages such as the cost of a new vehicle to replace the one damaged in the road accident, were not specifically pleaded. In the circumstances, what seems to be just to us is that by way of stay of the execution of the decree in this matter, the decretal amount minus the Kshs.6,000,000/- awarded as special damages for the replacement of the respondent's damaged car, be deposited by the applicant in an interest bearing bank account in the joint names of the advocates of the applicant and the respondent within 14 days from today until the determination of the applicant's intended appeal. Failure to make the deposit within the 14 days will render the stay granted herein void. Cost will be in the appeal.

Dated and delivered at Nairobi this 6th day of June, 2000.

A. M. AKIWUMI
.....
JUDGE OF APPEAL

P. K. TUNOI
.....
JUDGE OF APPEAL

E. O'KUBASU
.....
JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR.

