



REPUBLIC OF KENYA



KENYA LAW

THE NATIONAL COUNCIL FOR LAW REPORTING

Where Legal Information is Public Knowledge

**Okemwa & another v Opondo (Civil Appeal E660 of 2023)
[2024] KEHC 2104 (KLR) (Civ) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 2104 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL APPEAL E660 OF 2023**

JN MULWA, J

FEBRUARY 29, 2024

BETWEEN

BOSCO KARIUKI OKEMWA & ANOTHER APPLICANT

AND

GABRIEL OOKO OPONDO RESPONDENT

RULING

Ruling on Motion Dated 26/07/2023

1. I have considered the unopposed motion and prayers sought.
2. Judgment sought to be stayed was delivered on 10/07/2023 in CMCC No. E12243 of 2021 in favour of the Respondent in the sum of Kshs. 1,305,550/= with costs and interest.
3. Reasons for the Application for stay of execution pending hearing and determination of the Appeal – record yet to be filed are stated that if the said sum is paid to the Respondent and if the Appeal succeeds, repayment to the Applicant may be difficult which would be prejudicial to the Applicant. The Applicants are ready and willing to secure the decretal sum by a deposit by a bank guarantee in favour of the Respondent. I note that the Applicant has not stated the bank from which a guarantee may be obtained.
4. I have perused the Memorandum of Appeal dated 17/07/2023 to find out if the Appeal has high chances of success.
5. The Applicant has partially complied with conditions for stay of execution as provided under Order 42 Rule 6 (2) of the *Civil Procedure Rules* that the court must be satisfied that:-
 - a. Substantial loss may occasion to the Applicant if stay is not granted.



- b. Security for the due performance of the decree is offered.
 - c. Application is filed without undue delay
6. The impugned judgment was delivered on 10/07/2023. This Application dated 26/07/2023 was filed in less than 30 days.
 7. On substantial loss, the Applicants claims that the award of damages for pain and suffering following injuries in an accident is excessive and ought to be reduced. I have looked at the impugned judgment. The trial court held the Applicant 100% liable for the accident for the injuries the Respondent sustained.
 8. In the end I find the Application merited, and allow the same on the following terms;
 1. An order of stay of execution pending hearing and determination of the Appeal is granted subject to the Applicant paying to the Respondent through his Advocates Waiganjo Wachira & Co. Advocates Kshs. 600,000/= within 30 days of this ruling
 2. The balance of the decretal sum to be deposited in a joint interest earning account in the parties Advocates names within 45 days.
 3. The record of appeal to be filed within 60 days.
 4. Mention before DR for directions on the Appeal on 25/04/2024
 5. If order No. (1) and (2) above are not complied with, the stay orders shall lapse automatically.Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29TH DAY OF FEBRUARY, 2024.

J. N. MULWA

JUDGE

