



Case Number:	Civil Case 678 of 1990
Date Delivered:	12 Oct 1993
Case Class:	Civil
Court:	High Court at Mombasa
Case Action:	Ruling
Judge:	Tom Mbaluto
Citation:	Mary Wanjiru Gachii v Kenya Bus Services (Msa) Ltd [1993] eKLR
Advocates:	-
Case Summary:	<p>Mary Wanjiru Gachii v Kenya Bus Services (Msa) Ltd</p> <p>High Court, at Mombasa October 12, 1993</p> <p>Mbaluto J</p> <p>Civil Case No 678 of 1990</p> <p><i>Civil Practice & Procedure</i> – stay of execution – application for – where it's claimed that appeal has overwhelming chances of success – where it's claimed that if decretal amount is paid, it will not be refunded – whether these are sufficient grounds for grant of stay of execution – Civil Procedure Rules o XLI rule 4.</p> <p>The applicant in this case made an application for stay of execution under the provisions of Civil Procedure Rules o XLI rule 4. It was stated on behalf of the applicant that if the appeal had overwhelming chances of success, and that if the decretal amount was paid, it was to render appeal nugatory, counsel for the respondent expostulated that attachment of property had been effected and that there was no chances of appeal succeeding.</p>

	<p>Held:</p> <p>1. No order of stay of execution shall be made unless 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 unreasonable delay.</p> <p>2. Upon assessment of the matter, substantial loss was likely to occur if the application was not made.</p> <p><i>Stay of execution granted.</i></p> <p>Cases</p> <p>No cases referred to</p> <p>Statutes</p> <p>Civil Procedure Rules (cap 21 Sub Leg) order XLI rule 4(2)</p> <p>Advocates</p> <p><i>Mr Gidandi Ngibuini</i> for the Applicant</p> <p><i>Mr Mburu Kariuki</i> for the Respondent</p>
Court Division:	Civil
History Magistrates:	-
County:	Mombasa
Docket Number:	-
History Docket Number:	-
Case Outcome:	Stay of execution granted
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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REPUBLIC OF KENYA

IN THE HIGH COURT AT MOMBASA

CIVIL CASE NO 678 OF 1990

MARY WANJIRU GACHII APPLICANT

VERSUS

KENYA BUS SERVICES (MSA) LTD..... RESPONDENT

RULING

This is an application for stay of execution pending the hearing and determination of an intended appeal. It is made under O XLI rule 4 of the Civil Procedure Rules. It is supported by an affidavit sworn on 1.9.93 by learned counsel for the applicant Mr Gikandi Ngibuini in which he deposes that he had studied the proceedings and judgment and was of the view that the appeal has overwhelming chances of success and that the decretal amount if paid to the plaintiff will render the appeal nugatory as the plaintiff will then not be able to refund the amount paid to her.

By virtue of the provision of o 41 rule 4 (2) of the Civil Procedure Rules –

“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 unreasonable 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.

Although Mr Mburu Kariuki opposes this application on the grounds that the application is misconceived and bad in law; that the application has been overtaken by events as attachment of the defendant's property has been effected and that there are no chances of the appeal succeeding, I think most of those matters are not relevant factors for consideration in this application. Upon my assessment of the matter I am satisfied that substantial loss may result if the application is not made.

Accordingly I grant a stay of execution upon the following terms:-

(1) The entire decretal amount is paid within 2 weeks of the date hereof into an interest bearing account in a bank approved by both sides in the joint names of the advocates representing the two parties.

(2) The applicant to pay forthwith the respondent's costs incurred in connection with the execution proceedings.

(3) The applicant to pay the respondent's costs of this application.

Dated and Delivered at Mombasa this 12th day of October, 1993,

T. MBALUTO

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JUDGE



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