



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. E833 OF 2021

CROWN BEVERAGES LIMITED....APPELLANT/APPLICANT

VERSUS

MFI DOCUMENT SOLUTIONS LIMITED.....RESPONDENT

RULING

1. The appellant/applicant in this instance has brought the Amended Notice of Motion dated 19th January 2022 supported by the grounds set out in its body and the facts deponed in the supporting affidavit. The applicant sought for the substantive order for stay of execution of the judgment delivered on 3rd December, 2021 pending the hearing and determination of the appellant's Appeal.
2. The respondent opposed the Motion by filing the replying affidavit sworn by Sachin Mittal on 25th January 2022.
3. When the motion came up for interparties hearing the parties respective advocates chose to rely on the averments made in their respective affidavits.
4. I have considered the grounds laid out on the body of the Motion, the facts deponed in the affidavits supporting and opposing the Motion and the brief oral arguments.
5. A brief background of the matter as seen in the record is that the Respondent/Claimant filed a Statement of Claim dated 11th August 2021 before the Small Claims Court seeking judgment against the Applicant in the sum of Kshs.156,600/= together with costs arising from breach of an agreement and default of payments for services rendered since 2019.
6. Upon hearing the parties, the court vide the judgment delivered on 3rd December 2021 awarded the respondent an aggregate sum of Kshs.156,600/= as damages plus costs of the suit and interest at court rates. Being aggrieved by the aforementioned decision, the applicant appealed to this court against the lower court's judgment.
7. In his affidavit filed in support of the motion dated 19/01/2022, Mr. Barry Otieno, the IT Manger of the Appellant/Applicant avers that there is imminent possibility that the Claimant will proceed with execution against them unless restrained by a stay of execution of the decree which is sought in this application.
8. He further avers that the Applicant has a justifiable and arguable Appeal on issues of law which need to be accurately determined by the High Court.
9. The Applicant further avers that they will suffer great loss, irreparable damages and prejudice if the court does not issue a stay of execution orders and that the Respondent does not stand to suffer any prejudice if the said orders are granted.
10. The Applicant states that he is ready and willing to abide by any other orders that this court may give to ensure the fair and just disposal of this Application.
11. In response, Mr. Sachin Mittal stated that the Applicant's claims to have lodged an Appeal but has not served them the same therefore proving that no intention to Appeal has been communicated.

12. The Respondent avers that the Amended Application lacks merit, is grossly incompetent, misconceived and frivolous and that the Respondent stands to suffer prejudice if the orders sought are granted.

13. The principles guiding the grant of an application for stay of execution pending appeal are well settled. These principles are provided under Order 42 rule 6(2) of the Civil Procedure Rules which provides as follows:

No order for stay of execution shall be made under subrule (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.

14. On the issue of substantial loss to be suffered by an applicant which is the cornerstone in an application for stay. The applicant in this matter avers that it will suffer irreparable harm and financial loss if the Respondent proceeds with execution. The Respondent on the other hand have not demonstrated any substantial loss they would suffer if the stay orders are granted.

15. The Applicant has thus established that it will suffer substantial loss if the intended execution is not stayed. It also follows that if the Respondent executes the judgement and the Applicant's appeal succeeds, then not only will the Applicant suffer substantial loss but the appeal will also be rendered nugatory.

16. Was the application filed without unreasonable delay? The application has been filed one month after the delivery of the judgement. It is noted that the appeal was filed on 21st December, 2021 soon after the delivery of judgement thus signaling the Applicant's interest in pursuing the appeal. There is thus no inordinate delay on the part of the Applicant.

17. The Applicant has indicated its readiness and willingness to abide by any other orders that this court may give to ensure the fair and just disposal of this Application.

18. In **Harit Sheth Advocate -vs- Shamas Charania – Civil Appeal No. 68 of 2008**, this Court held:-

“The principal aims of the overriding objective include the need to act justly in every situation; the need to have regard to the principle of proportionality and the need to create a level playing ground for all the parties coming before the courts by ensuring that the principle of equality of arms is maintained and that as far as it is practicable to place the parties on equal footing.”

19. In the end the motion dated 19th January 2022 is found to be meritorious. It is allowed. Consequently, an order for stay of executions pending appeal is granted on condition that the appellant deposits the decretal sum in an interest earning account in the joint names of the advocate's and or firms of advocates appearing in this appeal within 45 days. In default the stay order automatically lapses.

20. Costs of the motion to abide the outcome of the appeal.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 18TH DAY OF

FEBRUARY, 2022

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant/Applicant

..... for the Respondent