



**Rupra Construction Company Limited v Longonot Place Limited (Miscellaneous Civil Application E209 of 2021) [2022] KEHC 14115 (KLR) (Civ) (21 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14115 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
MISCELLANEOUS CIVIL APPLICATION E209 OF 2021**

**JK SERGON, J**

**OCTOBER 21, 2022**

**BETWEEN**

**RUPRA CONSTRUCTION COMPANY LIMITED ..... DECREE HOLDER**

**AND**

**LONGONOT PLACE LIMITED ..... DEBTOR**

**RULING**

1. This ruling is the outcome of the notice of motion dated May 18, 2022 taken out by the judgment debtor/applicant herein. It is supported by the grounds stated on the face of the motion and the facts stated in the affidavit of Judy Wanjiku Njuguna, general manager of the applicant. The applicant sought for an order for a stay of execution of the decree issued by this court on November 26, 2021 pending an appeal against the same, to the Court of Appeal.
2. The decree holder/respondent did not put in a written response to the motion.
3. The motion was canvassed through brief oral arguments made by advocates on both sides, which I have considered together with the facts presented in the motion and its supporting affidavit.
4. Before I proceed to consider the same, I deem it prudent to give a brief background of the matter. Following the conclusion of arbitration proceedings before the arbitral tribunal ("the tribunal"), the respondent filed an application seeking leave to enforce the award made by the tribunal on December 10, 2020 whereas the applicant sought to have the award set aside.
5. Ultimately, this court vide the ruling delivered on November 26, 2021 dismissed the applicant's application for setting aside and allowed the respondent's application for enforcement of the arbitral award. A decree on the same was subsequently issued on January 28, 2022. The abovementioned ruling is now the subject of the instant motion.



6. However, before I consider the merits thereof, i will address a jurisdictional issue which was raised by the respondent at the oral hearing of the motion.
7. Ondieki, advocate for the respondent, argues that this court does not have jurisdiction to entertain the motion for the reason that the subject in dispute being an arbitration award, the provisions of the Civil Procedure Act and rules cannot apply.
8. The advocate further argues that there is a pending application before the Court of Appeal seeking leave to appeal and hence no appeal exists.
9. In retort, Kimani counsel for the applicant contends that leave to appeal had been granted by this court.
10. On the subject of the order for a stay of execution, I am of the view that notwithstanding the fact that the matter before the court arose out of an arbitration dispute, it is apparent that the order sought is for a stay of execution pending appeal and for that reason, the proviso of order 42, rule 6(2) of the Civil Procedure Rules would apply.
11. In respect to the subject of an appeal, upon my perusal of the record, I observed that following the delivery of the ruling on November 26, 2021 leave to appeal was granted following the request of the applicant.
12. Upon my further perusal of the record however, I observed that the applicant subsequently filed the notice of appeal dated December 10, 2021 followed by an application before the Court of Appeal where it sought a similar order for leave to appeal and for a stay of execution pending appeal, similar to the order presently before this court.
13. Going by the record, at the time of oral hearing of the instant motion on August 5, 2022 before me, the applicant’s advocate made mention that the application filed before the Court of Appeal was yet to be determined. It remains unclear whether an outcome has been arrived at on the same.
14. In view of the foregoing circumstances, I find that i am unable to consider the merits of the instant motion.
15. Consequently, the notice of motion dated May 18, 2022 is hereby dismissed, with each party bearing their own costs.

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 21<sup>st</sup> day of October, 2022.

.....

**J. K. SERGON**

**JUDGE**

**In the presence of:**

..... for the Judgment Debtor/Applicant

..... for the Decree holder/Respondent

