



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL & TAX DIVISION

HCCC NO. 439 OF 2017

SIFA TOWERS MANAGEMENT LIMITED.....PLAINTIFF

VERSUS

BELL ESTATE AGENCY LIMITED.....1ST DEFENDANT

SIFA INSURANCE BROKERS LIMITED.....2ND DEFENDANT

NIC BANK LIMITED.....3RD DEFENDANT

POSH PALACE HAIR STUDIO LIMITED.....4TH DEFENDANT

FELICITY WARDROBES LIMITED.....5TH DEFENDANT

RULING

1. The Notice of Motion of 21st July 2020 is all but compromised. It seeks the following prayers:-

1. Leave be and is hereby granted to the Law Firm of Owino Kojo & Co. Advocates to act on behalf of the 1st and 2nd Defendants in place of Aming'a, Opiyo, Masese & Co. Advocates.

2. Pending hearing and determination of this Application, this Honourable Court be pleased to grant an order of stay of execution of the Judgment delivered on 29.04.2020.

3. Leave be and is hereby granted to the 1st and 2nd Defendants to institute an appeal against the Judgment of this Honorable Court delivered on 29.04.2020 within 60 days or within a period to be determined by the Court, and that the leave so granted do act as stay of execution pending institution of the said Appeal.

4. The Draft Notice of Appeal dated 20.07.2020 be deemed to be properly on record.

5. Costs of this application be granted to the 1st and 2nd Defendants against the Plaintiff.

2. Prayer 1 was not opposed and regarding prayer 4, there does already seem to be a duly filed Notice of Appeal. But if it is not, the Respondents do not oppose it. It is granted.

3. As to stay of execution, again, the Respondent is not opposed to it but seeks that it be granted on condition.

4. In the Judgment of 29.04.2020, sought to be stayed, the Court had entered Judgment against the Applicants for Kshs.8,757,815.00. This would attract interest at Court rates from the date of filing suit until payment in full.

5. The Applicants argue that they are "fully engaged in the business of leasing out their premises from which they earn their income". I

understand them to be saying that the only source of income is rent from their premises. They state that the Covid-19 pandemic has taken a toll on their business as many of their tenants have been forced to terminate their leases. In view of that they offer Kshs.500,000/= as security. The Court is asked to consider this favourable as it has previously paid a sum of Kshs.1,000,000/= to the Respondent.

6. The Respondent's counsel correctly points out that the submissions regarding Covid-19 and its effect on the Applicants' business should be disregarded as they are not deponed to in the affidavits in support of the application. Counsel is correct that there is no evidence to back the lamentation.

7. To the proposal to deposit Kshs.500,000/=, the Court is asked to find the amount totally unreasonable as the decretal sum is in excess of Kshs.8,000,000/=. As to the Kshs.1,000,000/= allegedly paid the Respondent think it to be a mischievous argument as it was remitted as a condition for grant of injunction in Civil Suit No. 417 of 2017.

8. The Judgment sum is Kshs.8,757,815.00. No sum has been paid to the Plaintiff yet it has a Judgment in its favour. There is no part payment of Kshs.1,000,000/= as alluded. In addition, the Defendant has not demonstrated difficulties it has with meeting the decretal sums. The Court will grant stay on the following two conditions:-

- a. 1/3 of the decretal sum be paid to the Plaintiff within 60 days of this Ruling.
- b. The Applicants shall furnish security for the remainder of decretal sum from a reputable financial institution within 60 days of this Ruling
- c. In default of either condition, then the stay stands discharged automatically without need of a further Court order.

9. Each party to bear costs of the Motion of 21st July 2020.

Dated, Signed and Delivered in Court at Nairobi this 22nd Day of February 2021

F. TUIYOTT

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 17TH April 2020, this Ruling has been delivered to the parties through virtual platform.

F. TUIYOTT

JUDGE

PRESENT:

Kojo for the Applicant.

Miriithi for the Respondent.