

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 699 OF 2017

CO-OPERATIVE BANK OF KENYA LTD.....APPELLANT

VERSUS

NGERA MUTHAMI T/A

ROZINA TRANSPORTERS RESPONDENT

RULING

This is an application by way of Notice of Motion under Order 46 Rule 6, Order 22 Rule 22 and Order 51 Rule 1 of the Civil Procedure Rules, Sections 1A, 1B, 3,3A, and 63 (e) of the Civil Procedure Act for the substantive order that there be a stay of execution in this matter following the judgment delivered by C. Kariuki J on 29th November, 2019.

It is supported by grounds set out on the face of the application and a supporting affidavit sworn by one Lawrence Karanja, a legal officer at the appellant's office. The application is opposed and there are grounds of opposition filed on behalf of the respondent, followed by a supplementary affidavit sworn by the same Lawrence Karanja on behalf of the appellant. Parties have filed submissions addressing the application which I have considered alongside the authorities cited.

Following the judgment of the High Court aforesaid, the applicant filed a Notice of Appeal dated 13th December,2019 in the Court of Appeal under Rule 74 of the Court of Appeal Rules. This application was filed on 31st January, 2020. It is clear that the appellant did not waste any time to demonstrate the desire to be heard by the Court of Appeal.

It is not easy for this court to determine whether or not the appeal to the Court of Appeal is arguable. I believe that should be left to the court that will eventually be seized of this matter. I recognize the fact that the respondent has a judgment in his favour, while the applicant has the right to pursue the appeal in the Court of Appeal.

In balancing the interests of both parties, I am inclined to allow the application for stay limited to 45 days from the date of this ruling such that, the applicant shall have sufficient time to move the Court of Appeal under Rule 5 (2) (b) of the Court of Appeal Rules.

I take this step on my understanding that, once a Notice of Appeal has been lodged in the Court of Appeal the High Court is divested on any jurisdiction to deal with an application of this nature. That is to say, it is *functus officio*.

The foregoing shall be orders of this court and each party shall bear their own costs.

Dated, signed and delivered at Nairobi this 11th day of February, 2021.

A. MBOGHOLI MSAGHA

JUDGE