



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL APPEAL NO. 495 OF 2018**

**CHAI HOUSING CO-OPERATIVE SAVINGS**

**& CREDIT SOCIETY LIMITED.....APPELLANT**

**VERSUS**

**MARIE WAMBU THANDE.....RESPONDENT**

**RULING**

- 1) The appellant took out the motion dated 4<sup>th</sup> March 2021, whereof it sought for the enlargement of time within which it can provide the security of ksh.1,007,000/= for a period of thirty (30) days.
- 2) The appellant also beseeched this court to allow it to provide a bank guarantee for the aforesaid amount from the Cooperative Bank of Kenya as security for the decretal sum. The motion is supported by the affidavit of Peter Wachira. When served, the respondent filed a replying affidavit she swore to oppose the motion.
- 3) I have considered the grounds stated on the face of the motion plus the facts deponed in the rival affidavits. The appellant has averred that on 8<sup>th</sup> October 2020, this court granted it an order for stay of execution on condition that it deposits the decretal sum of kshs.1,007,000/= in an interest earning account in the joint names of the advocates appearing in this matter within 30 days from the date of the order.
- 4) The applicant avers that it has been unable to make the deposit because it was hampered by the outbreak of Covid 19 pandemic. The appellant further pointed out that this court also extended the period by 30 days from 11<sup>th</sup> December 2020 to enable it make the deposit but it has been unable to raise the amount until recently that it secured a bank guarantee.
- 5) The respondent urged this court to find that the applicant's motion amounts to an abuse of the court process and is without merit. The respondent pointed out that the applicant has made numerous applications for extension of time to provide security for the due performance of the decree with no intention of doing so but with intent to procrastinate the conclusion of the dispute.
- 6) The record shows that the applicant was granted an order for stay of execution of the decree pending appeal on condition that it deposits the decretal sum of ksh.1,007,000/= in an interest earning account in the joint names of the advocates appearing in this appeal within 30 days from the date of the order.
- 7) It is also apparent from the record that the appellant successfully sought for extension of time by 30 days from 5<sup>th</sup> November 2020 to make the deposit. In both occasions the appellant did not make the deposit. The appellant is now before this court seeking to be allowed to provide a bank guarantee instead of making a cash deposit.
- 8) The appellant has stated that it has been hampered by the outbreak of Covid 19 pandemic from complying with the court order.
- 9) The respondent did not controvert this averment which is to the effect that the appellant's financial ability was affected by the outbreak of the covid 19 pandemic.
- 10) I am convinced the ground advanced by the appellant to is plausible thus entitling it to benefit from this court's discretion.
- 11) In the end I allow the appellant's motion giving rise to issuance of the following orders

**i. The appellant/applicant is granted 21 days from the date hereof to provide a bank guarantee for ksh.1,007,000/= from Cooperative Bank of Kenya Ltd as security for the due performance of the decree as a condition for the continued subsistence of the order for stay of execution of the decree pending appeal.**

ii. In default execution to issue without further reference to this court.

iii. Costs to abide the outcome of this appeal.

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 21<sup>st</sup> day of May, 2021.

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant/Applicant

..... for the Respondent