

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

CORAM: D. S. MAJANJA J.

CIVIL CASE NO. 414 OF 2013

BETWEEN

SENTRIM KENYA LIMITED.....PLAINTIFF

AND

CFC STANBIC BANK LIMITED.....DEFENDANT

RULING

1. The Plaintiff has invoked **Order 42 rule 6** of the *Civil Procedure Rules* and seek, “An order of stay of execution of the tax(ed) costs, set out in the certificate of taxation dated 13th August 2021, do issue pending the determination of the plaintiff’s appeal filed at the Court of Appeal being Nairobi Civil Appeal No. E288 of 2020 – Sentrim Kenya Limited v CFC Stanbic Bank.”

2. The application is grounded on the supporting affidavit of Harji Velji Hirani, a director of the Plaintiff, sworn on 25th August 2021. It is opposed by the Defendant through the replying affidavit of Allen Waiyaki Gichuhi, the Defendant’s Advocate on record, sworn on 26th August 2021.

3. Both counsel appearing for the parties made submissions in support of their respective positions which I have considered bearing in mind the principles for granting stay clearly stated in **Order 42 rule 6** of the *Civil Procedure Rules*. In order to succeed, the applicant must demonstrate substantial loss may result unless the order of stay is made. It must also demonstrate that the application has been brought without undue delay and lastly, the applicant must give such security as the court may order for the due performance of the decree or order as the case may be.

4. In his affidavit in support of the application, Mr Hirani depones as follows:

[8] The plaintiff is prepared to deposit the taxed costs in a joint interest earning account of the parties’ advocates should the court order that security be furnished for grant of stay of execution. If the plaintiff is made to pay the taxed costs now and later succeeds in its appeal, it would lose interest that the funds would have earned over possibly a long period of time....

5. From the deposition aforesaid, the Plaintiff admits that it can pay up the money adjudged as costs but would prefer that the money is deposited in a joint account. Its grievance being that it may not recover lost interest in the long run. In other words, it states that it shall suffer substantial loss. This position is not borne out by the fact that the Defendant is a large and established bank capable of repaying any amount that may be found due and owing. In other words, the Plaintiff has not shown that it will suffer substantial loss if the costs are paid out to the Defendant. Although the parties made arguments as to whether the money should be paid to the Advocates, ultimately the costs are due to the Defendant who will be called upon to refund the same if the appeal is successful.

6. The court dismissed the Plaintiff’s suit with costs to the Defendant. The costs have been taxed and certified. I do not find any basis to grant a stay of execution of those costs as the Plaintiff has not demonstrated substantial loss. Consequently, the application dated 25th August 2021 is now dismissed with costs to the Defendant.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF AUGUST 2021.

D. S. MAJANJA

JUDGE

Mr Rapando instructed by Rapando and Odunga Advocates for the Plaintiff.

Mr Gichuhi instructed by Wamae and Allen Advocates for the Defendant.