



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 141 OF 2010

WANJIKU MUCHEMI.....PLAINTIFF/RESPONDENT

-VERSUS-

THE STANDARD GROUP LIMITED.....1ST DEFENDANT/APPLICANT

KIPKOECH TANUI.....2ND DEFENDANT/APPLICANT

CYRUS OMBATI.....3RD DEFENDANT/APPLICANT

RULING

1. This ruling is predicated on the Notice of Motion dated 8th January, 2020 taken out by the defendants/applicants supported by the grounds set out on its body and the facts stated in the affidavit of Millicent Ng'etich. The applicants sought for an order for a stay of execution of the judgment delivered by the court on 7th November, 2019 pending the hearing and determination of the intended appeal to the Court of Appeal against the said judgment.

2. To resist the Motion, the respondent swore and filed the replying affidavit dated 2nd March, 2021.

3. The instant Motion was to be canvassed through written submissions. However, at the time of writing this ruling, this court notes that the submissions by the applicants had not been availed in the court file and it remains unclear whether the applicants complied with the directions requiring them to put in written submissions.

4. I have considered the grounds laid out on the body of the Motion; the facts deponed in the affidavits supporting and challenging the Motion; and the written submissions and authorities cited.

5. It is clear that the instant Motion is seeking for an order for stay of execution of the judgment and decree pending appeal.

6. However, before I address the merits of the Motion, I deem it necessary to address an issue which was raised by the respondent: that the applicants have failed to comply with the Court of Appeal Rules 2010 concerning the filing of the appeal, so as to warrant the granting of the order for a stay of execution sought. Though the applicants did not offer any response to those averments, it is clear in my mind that the question as to whether the appellants complied with the Court of Appeal Rules is an issue which can only be determined by the Court of Appeal within 14 days of the judgment or order being appealed against. The applicants have shown that they lodged the notice of appeal within the time fixed. This court will therefore determine the application on its merits.

7. It is the submission of the defendants/applicants that they are entitled to be granted an order for stay of execution because they may suffer substantial loss if they are ordered to pay such a substantial amount at once.

8. The plaintiff opposed the application arguing that mere financial burden occasioned by a judgment does not in itself constitute substantial loss. It is not in dispute that the principal judgment sum is ksh.17,000,000/= which by all standards is a colossal amount. The question as to whether payment of the aforesaid amount at once amounts to substantial loss is debatable.

9. The other issue which is related to the instant argument is whether the plaintiff is in a position to make a refund should the appeal turn out to be successful. The parties did not clearly bring out the issue in their arguments. I think in the circumstances of this matter, it is only fair to grant a conditional order for stay of execution. Though there was no offer to provide security on the part of applicants, there is a tacit averment on the part of the applicants that they are ready and willing to abide by any of the court's direction.

10. In the end I find the applicants' motion dated 8th January 2020 to be meritorious. The same is allowed. Consequently, an order for stay of execution of the judgment/decreed is granted pending appeal on condition that the appellants deposit the decretal sum of ksh.17,000,000/= in an interest earning account in the joint names of advocates or firms of advocates appearing in this matter within 60 days from the date hereof. In default the order for stay shall be deemed to have been denied.

11. Costs of the motion to abide the outcome of the appeal.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 30TH DAY OF DECEMBER, 2021.

.....

J. K. SERGON

JUDGE

In the presence of:

.....for the Plaintiff/Respondent

.....for the Defendants/Applicants