

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CIVIL APPEAL NO. 88 OF 2019

THE BOARD OF MANAGEMENT SHIVEYE SECONDARY SCHOOL.....APPELLANT

VERSUS

BONVENTURE MATISIO t/a BULIRA CONSTRUCTORS.....RESPONDENT

(Being an appeal from the judgment and decree of the Hon. Noelyne Akee Resident Magistrate (RM),

in Kakamega CMCCC No. 118 of 2016 of 11th June 2018)

RULING

1. The appeal herein arose from a judgment that was delivered in Kakamega CMCCC No. 118 of 2018, a suit for recovery of a sum of Kshs. 124, 400.00, where the trial court awarded the amount sought, plus interests and costs.
2. The Motion, dated 8th October 2019, is for stay of execution of the said judgment and decree, pending the hearing and determination of the instant appeal. The appellant argues that it has an arguable appeal on merits, and failure to grant the stay sought could render its appeal nugatory.
3. The application is opposed, there is a replying affidavit filed by the respondent. He argues that the application is misconceived, and it has not been demonstrated that the appellant would suffer substantial loss should the same not be allowed.
4. The application was filed under certificate of urgency, and was first placed before Njagi J, on 8th October 2019. Temporary stay orders were granted. It was directed on 20th October 2019 that the same be canvassed by way of written submissions. Both sides have complied with those directions, by filing detailed written submissions, complete with the authorities that they rely on. I have scrupulously read through the said written submissions and noted the arguments that are advanced in them.
5. A party against whom a decree has been pronounced is entitled to challenge the same at a higher court. That is what the appellant has done here. It is its right to appeal. That having happened I need to consider whether to stay the decree the subject of the challenge, pending appeal. The decree in question is monetary. The mantra is that money decrees ought not to be readily stayed. The appellant has not sought to demonstrate that it would not recover the decretal sum from the respondent, should the appeal be successful, after the decree has been settled. It has not been demonstrated that the respondent is a person of straw.
6. The other consideration is security for due performance. No offer to deposit security has been made. The respondent has a valid decree. He is entitled to his judgment money. For him to be kept away from his money there must be guarantees or undertakings that the appellant would pay the said sum should their appeal be unsuccessful. I note that the appellant is a public school, dependent on moneys collected from students, as well as funds from government. I note too that the dispute centres on a contract that it entered into with the respondent for services to be rendered for monetary consideration. No doubt there must have been a budget for the works.
7. In the end, I shall confirm the temporary stay of execution of the decree of the trial court in Kakamega CMCCC No. 118 of 2018 pending appeal, so that there is stay of execution of the judgement and decree of the lower court pending appeal. As a condition to that stay, the appellant shall deposit the judgment sum of Kshs. 124, 400.00 in court as security for due performance, within thirty (30) days of this order, in default of which execution shall ensue, without any further reference to court.
8. The matter shall be allocated a date for mention, at the delivery of this ruling, for the purpose of giving directions on the disposal of the appeal. It is so ordered.

DATED, SIGNED and DELIVERED at KAKAMEGA this 24th DAY OF January, 2020

W. MUSYOKA

JUDGE