

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL APPEAL NO. 709 OF 2019

NANCY CHEPKORIR.....APPLICANT

VERSUS

G.E. EAST AFRICA LIMITED.....RESPONDENT

RULING

1. The application dated 4th December, 2019 seeks orders that the honourable court be pleased to grant stay of execution in Milimani Civil suit 1478 of 2019 pending the hearing and determination of the notice of motion application dated 29th November, 2019 and filed at the Magistrate's Court Milimani.

2. Secondly, the honourable court be pleased to issue orders restraining the Respondent either by itself, servants, auctioneers from selling or disposing of either by public auction or private treaty or in any other way interfering with the Appellant/Applicant proclaimed property pending the determination of this application interparties.

3. The lower court entered default judgment in favour of the Respondent against the Applicant for the sum of Ksh.194,475/= plus interest and costs. Subsequently, the Applicant filed an application for stay of execution before the lower court. The said application was certified urgent and fixed for *interparties* hearing. The Applicant is apprehensive that the Auctioneers will seize her household properties for sale by public auction. It is further averred that the Applicant was not served with Summons to Enter Appearance. The Applicant is willing to abide by the terms and conditions set by the court.

4. The application is opposed. It is stated in the replying affidavit that the Applicant was served with summons to Enter Appearance and subsequently served with notice of entry of judgment. That the execution process has commenced and warrants of Attachment and Sale of the Applicants moveable property issued to the Auctioneers. That the Applicant has not met the conditions for grant of stay. It is further stated that the Respondent is financially stable and capable of refunding the decretal sum in the unlikely event that the Appeal is successful.

5. I have considered the application, the response thereof and the written submissions filed by counsel for the respective parties.

6. Under Order 42 rule 6 (2) of the Civil Procedure Rules, 2010 the conditions for stay of execution are as follows:

“No order for stay of execution shall be made under sub-rule (1) unless –

(a) The court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

(b) Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

7. The application at hand was filed on 5th December, 2019. The judgment of the lower court was delivered on 2nd December, 2019. The application was filed timeously.

8. On substantial loss, there are no allegations made that the Respondent is not capable of refunding the decretal sum. However, the Appeal filed herein stands to be rendered nugatory if the application is not allowed.

9. To balance the competing interests of the parties, I allow the application on condition that the Applicant deposits the decretal sum in a joint interest earning account of the parties or in court within 30 days from the date hereof.

Dated, signed and delivered in Nairobi this 29th day of May, 2020

B. THURANIRA JADEN

JUDGE