



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 409 OF 2019

BIBIANA MBATHA NGOTHO.....APPELLANT/APPLICANT

-VERSUS-

ODERA OBAR & COMPANY ADVOCATES.....RESPONDENT

RULING

1) The Appellant/Applicant herein took out the motion dated 14th April 2020 in which she sought for the following orders:

i. THAT this application be certified urgent and be heard in the first instance and service thereof be dispensed with on a priority basis.

ii. THAT this honourable court do extend the orders of stay of execution of the judgment and decree delivered on 19th June 2019, pending the hearing and determination of this application.

iii. THAT this honourable court do extend the period of 45 days to 90 days within which the Appellant is required to pay the respondent half of the decretal sum and to deposit the other half in a joint-interest earning account in the names of the parties' respective advocates, as per the orders issued on 20th February 2020.

iv. THAT the costs of this application be in the appeal.

2) Bibiana Mbatha Ngotho, the Appellant/Applicant filed an affidavit she swore in support of the motion. When served, the respondent filed a replying affidavit of Odera Obar to resist the motion.

3) The motion came up for interpartes virtual hearing. It is the submission of Mr. Kago, learned advocate for the Appellant/ Applicant that the Applicant was unable to comply with the orders of Lady Justice Njuguna issued on 2th February 2020 requiring her to pay half of the decretal sum to the respondent and to deposit the other half in an interest earning account in the joint names of the advocates and or parties within 45 days from the date of the ruling. The main reason put forward by the Appellant that prevented her from complying with the order is the outbreak of the Covid 19 Pandemic.

4) It is averred that the Appellant who resides in the United States of America, which currently has the highest number of confirmed Covid 19 infections, has been experiencing difficulties to raise the funds necessary to meet the conditions imposed by the court. For the above reason, this court was beseeched to grant the orders sought. The Applicant argued that unless the order is granted she stands a risk of suffering irreparable loss and damage.

5) Mr. Odera, learned advocate appearing for his law firm, the respondent herein, appeared and argued to oppose the motion. The learned advocate pointed out that it is now more than 13 years since the cause of action and the amount due to the respondent remains unsettled.

6) It was also pointed out that more than 90 days have lapsed since the application was filed and therefore there is nothing to extend hence the Applicant does not deserve to benefit from the discretion of this court.

7) Mr. Odera further averred out that despite the Applicant having been paid a sum of kshs. 137 million in another file pending before the Environment and Land Court, Machakos, she failed to settle the decree which is the respondent's accrued legal fees.

8) The learned advocate further pointed out that the properties the respondent is holding as a lien were fraudulently disposed of by the Applicant and that the matter Covid 19 Pandemic is a mere excuse on the part of the Applicant.

9) In response to the respondent's averment that the properties the respondent held as a lien had been fraudulently disposed of, the Applicant stated that the allegations are not true.

10) Having considered the rival arguments, it is apparent that the main issue to be determined is whether or not the Appellant/Applicant deserves an extension of time to comply with court orders.

11) I have already indicated that the Appellant/Applicant has averred that she was frustrated by the occurrence of Covid 19 Pandemic from complying with the orders issued by Lady Justice Njuguna on 20th February 2020. The respondent has not disputed the fact that Covid 19 Pandemic arose within the period the Appellant/ Applicant was required to pay and deposit the decretal sum.

12) The Appellant/Applicant has specifically requested to be given 90 days to comply with the conditions stated by the court. I am convinced that the reason advanced by the Appellant/Applicant is plausible and not a mere excuse hence the Applicant deserves to benefit from this court's discretion.

13) The Applicant sought for 90 days to comply. Lady Justice Njuguna had given the Appellant/Applicant 45 days from 20th February 2020, to comply. It is apparent that by the time the motion, the subject matter of ruling was filed, the days given had lapsed i.e as of 6th April 2020. It should be noted that despite the fixed period having lapsed, the court still retains the discretion to extend time fixed by the court to do something.

14) If the court is convinced that an Applicant deserves an extension of time, then the period shall run from the date of the decision to extend time. The application dated 14.4.2020 was filed on the same date. More than 50 days have lapsed since the application was filed. The Appellant required an extension of time by 90 days to comply.

15) I hereby allow the motion be extending time by 45 days from the date of this ruling to enable the Appellant/Applicant comply with the conditions set by Lady Justice Njuguna in her ruling delivered on 20th February 2020. There be a stay of execution of the decree pending appeal which order shall automatically lapse if the Appellant/Applicant defaults to comply with the conditions set within 45 days. In the circumstances of this case a fair order on costs of the motion is to direct which I hereby order that each party meets its own costs.

Dated, Signed and Delivered virtually via Microsoft Teams in Nairobi this 12th day of June, 2020.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent