



**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MILIMANI LAW COURTS**

**COMMERCIAL AND TAX DIVISION**

**CORAM: D. S. MAJANJA J.**

**CIVIL APPEAL NO. E011 OF 2020**

**BETWEEN**

**MAHESH HARA KHCHAND DODHIA.....APPLICANT**

**AND**

**EDDY NICHOLAS OMBUNDO ORINDA T/A ONE AND**

**ASSOCIATES ADVOCATES.....RESPONDENT**

**RULING NO. 2**

1. On 30<sup>th</sup> June 2020 I allowed the appellant's Notice of Motion dated 19<sup>th</sup> May 2020 made under **Order 42 rules 6 and 7** of the *Civil Procedure Rules* seeking a stay of execution pending hearing and determination of the appeal on the following terms:

- a. The sum of Kshs. 500,000.00 deposited in court shall remain in court pending the hearing and determination of the appeal.
- b. The balance of the decretal sum shall be secured by a bank guarantee from a reputable bank within 30 days.
- c. The costs of this application shall be in the appeal.

2. The appellant has now moved the court by a Notice of Motion dated 20<sup>th</sup> July 2020 seeking, inter alia, the following orders:

[2] THAT pending the hearing and determination of this application and the intended appeal, time for compliance of the order (b) [That the balance of the decretal sum shall be secured by a bank guarantee from a reputable bank within 30 days] of the ruling dated and delivered on 30<sup>th</sup> day of June 2020 be enlarged by 120 days.

[5] THAT the appellant be accommodated to the extent that the time that the balance of the decretal sum shall be secured by a bank guarantee from a reputable bank within 30 days be extended.

3. The application is supported by the appellant's affidavit. The appellant states that due to financial constraints he is unable to secure the guarantee as ordered and he seeks more time to secure it. He also states that he is in the process of fast-tracking the appeal. Mr Cheboi, counsel for the appellant, reiterated this position in his oral submissions and urged the court to give the appellant 120 days for him to secure the guarantee.

4. The respondent opposed the application. Mr Indimuli, counsel for the respondent, submitted that appellant's application is in reality an application for review and the grounds for review have not been satisfied. He further submitted that the appellant has no intention of complying with the orders. The respondent urged the court to dismiss the application.

5. The power of the court to extend time for compliance with its order is within the court's discretion. It is upon the applicant to furnish grounds or facts upon which the court may exercise that discretion. In his deposition the appellant has explained that he has only Kshs. 24,674.40 in his account and he does not have means to secure a guarantee. He is therefore seeking assistance to secure the guarantee within a period of 120 days.

6. I am aware and indeed take judicial notice of the difficult economic circumstances occasioned by the COVID-19 pandemic. The amount of the guarantee is about Kshs. 17,000,000.00 which, I daresay, is not an insignificant amount. While it is true that the appellant wishes to expedite the appeal, he cannot run away from the fact that the respondent is entitled to the fruits of his judgment which this court has ordered must be secured. The respondent must comply with the order to provide security before the appeal is heard and determined.

7. I therefore allow the Notice of Motion dated 16<sup>th</sup> July 2020 on the following terms:

- a. The time for providing the bank guarantee as ordered by this court on 30<sup>th</sup> June 2020 is extended for a period of 45 days only.
- b. The costs of this application shall be in the appeal.

**DATED and DELIVERED at NAIROBI this 28<sup>th</sup> day of JULY 2020.**

**D. S. MAJANJA**

**JUDGE**

Mr Cheboi instructed by Cheboi, Kiprono Advocates for the appellant.

Mr Indimuli instructed by One and Associates Advocates for the respondent.