



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL APPEAL NO. 722 OF 2016**

**G4S KENYA LIMITED.....APPELLANT**

**VERSUS**

**AMBER ENTERPRISES LIMITED.....RESPONDENT**

**RULING**

This is an application by way of notice of motion dated 25<sup>th</sup> March, 2020 under Order 22 rule 22, Order 42 rule 6 and order 51 rule 1 of the Civil Procedure Rules, Sections 1A, 1B, 3 and 3A of the Civil Procedure Act, seeking an order that there be a stay of execution of the High Court Judgment delivered on 27<sup>th</sup> February, 2020 pending the hearing of the appeal in the Court of Appeal.

The reasons for seeking the said order appear on the face of the application and there is a replying affidavit sworn by the Managing Director of the respondent. The application is opposed and there are grounds of opposition filed on behalf of the appellant. Both parties have filed submissions which I have noted.

The judgment of the High Court was delivered on 27<sup>th</sup> February, 2020. The respondent being dissatisfied with that judgment applied for the proceedings on the same day. The Notice of Appeal was lodged on 2<sup>nd</sup> March, 2020. Looking at the calendar, the judgment was delivered on a Friday and the notice lodged on Monday. That can only show the determination of the respondent/ applicant to exhaust the legal avenues available.

Before the decision of the High Court, there were orders for stay of execution which required the decretal sum to be deposited in a joint account held by the advocates. This was complied with and the money is still in that joint account.

The order sought is discretionary and considering the prompt steps taken by the respondent applicant, alongside the deposit of the decretal sum, the appellant cannot be said to be placed in a prejudicial position and in any case, no prejudice has been alleged shall befall the appellant in the circumstances.

The respondent/applicant has a right of appeal, which right should not be curtailed by execution at this stage. I have considered the circumstances and the respective positions of both parties. I am inclined to exercise the discretion of the court by allowing the application for stay of execution limited to 60 days, to allow the respondent applicant lodge an application for stay of execution before the Court of Appeal under rule 5 (2) (b) of the rules of that Court.

I make that order informed of the fact that, it is that court that shall determine whether or not the appeal is arguable. The costs of this application shall abide by the decision of the appeal.

***Dated, signed and delivered at Nairobi this 23<sup>rd</sup> day of July 2020.***

**A. MBOGHOLI MSAGHA**

**JUDGE**