



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL APPEAL NO. 705 OF 2019

THE AGRICULTURAL SOCIETY OF KENYA.....APPLICANT

VERSUS

ARTESIAN (K) LTD.....RESPONDENT

RULING

1. The application dated 5th March, 2020 principally seeks orders that:

“1. Spent

2. Spent

3. This honourable court be pleased to issue orders for stay of execution and/or any further proceedings of the judgment delivered by the honourable court on 8th November, 2019 in NBI CMCC No. 497; Artesian Kenya Ltd v The Agricultural Society of Kenya as against the Appellant/Applicant pending the hearing and final determination of the Appellant/Applicant’s appeal.

4.This honourable court be pleased to issue orders for stay of proceedings in NBI CMCC No 497 of 2010 ; Artesian Kenya Ltd v The Agricultural Society of Kenya pending the hearing and final determination of the Appellant/Applicant’s appeal on such terms as this court may find fit and just.

5.This honourable court be pleased to issue orders that the Ksh.1,000,000/= deposited by the Applicant be deemed/regarded as security pending the hearing and determination of the appeal.

6. Costs of this application be provided for.”

2. It is stated in the grounds and the affidavit in support of the application that judgment was entered against the Defendant on 8th November, 2019. That the Applicant is dissatisfied with the said judgment and has appealed herein. That the Applicant is apprehensive that the Respondent may commence the execution process, hence the application at hand. It is averred that the Applicant stands to suffer irreparable loss and that the Appeal may be rendered nugatory as the Applicant may never recover the decretal sum. It is further stated that a sum of Ksh.1,000,000/= has already been deposited in court as security. It is contended that the Appeal has high chances of success.

3. The application is opposed. It is stated in the replying affidavit that the Respondent is a large, well established company of good repute and will be able to refund the decretal sum should the Appeal succeed. That the deposit of the sum of Ksh.1,000,000/= was made in court as a condition for the setting aside of a default judgment and cannot be deemed as security herein. That the decretal sum is in excess of Ksh.5,000,000/= and no security has been offered by the Applicant for the same.

4. I have considered the application and the response to the same. On 15th July, 2020 the parties were given directions to file written submissions. The Applicant did not file any. I have considered the submissions filed by the Respondent.

5. 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.”

6. The judgment of the lower court was delivered on 8th November, 2019. Although the Appeal was filed timeously on 4th December, 2019, there is no explanation for the delay in the filing of the application at hand which was filed on 5th March, 2020.

7. No security has been offered for the due performance of the decree. The Ksh.1,000,000/= deposited in the trial court appears to be the subject of the orders made therein.

8. To balance the competing interests of both parties herein, I allow the application on condition that the decretal sum is deposited in a joint interest earning bank account of the respective counsel for the parties or in court within 30 days from the date hereof.

Date, signed and delivered at Nairobi this 29th day of Sept., 2020

B. THURANIRA JADEN

JUDGE