



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET**

**CIVIL APPEAL NO. 22 OF 2020**

**SAFARICOM LIMITED.....APPLICANT**

**VERSUS**

**ANNETH JEROP TARUS.....1<sup>ST</sup> RESPONDENT**

**LINDAH NAJOLI IDALI.....2<sup>ND</sup> RESPONDENT**

**RULING**

What is pending before the court is an application dated 4<sup>th</sup> March 2020 and filed on 5<sup>th</sup> March 2020. The applicant seeks, in a nutshell, the following orders;

- a) There be a stay of execution of the decree, judgment and any subsequent orders in this matter including execution pending the hearing of this application.
- b) There be a stay of execution of the decree, judgment and any subsequent orders in this matter including execution pending the hearing of the appeal.
- c) There be an injunction restraining the respondents from interfering with the respondent's movable property or any other available asset in satisfaction of the judgment herein pending the determination of the intended appeal, and
- d) Costs.

**APPLICANT'S CASE**

The applicant filed a supporting affidavit with the application. The application also contained the grounds on which the prayers were sought.

The application is based on the grounds that pursuant to the judgment delivered on 24<sup>th</sup> January 2020 in favour of the 1<sup>st</sup> respondent, she may move to execute the decree and obtain adverse orders of consequence against the applicant herein following expiry of stay orders on 24<sup>th</sup> February 2020.

The appeal raises arguable issues and any rights which may be realised through the pending appeal shall be rendered nugatory. The applicant deponed that it is in a position to settle the sum once the appeal is determined.

The applicant also filed a notice of appeal.

**RESPONDENT'S CASE**

The respondent filed a replying affidavit. She depones that the application is based on falsehoods and is an attempt to deceive the court. She deponed that the applicant has failed to disclose material facts to the court. The applicant's application does not merit as it failed to file an application within 30 days of lapse of stay orders on 24.02.2020. It only chose to move the court when execution commenced. The application is overtaken by events. The application does not meet the threshold for stay orders.

She annexed her job card and stated that she is not a woman of straw. Further, that she would be able to repay the decretal amount if the appeal succeeds.

**ISSUES FOR DETERMINATION**

a) Whether the orders for stay should be granted

The respondent has raised concerns that the application is merely a means to delay her enjoyment of the fruits of judgment. The decretal sum is Kshs.748,500/-.

*Order 42 Rule 6(1)* of the *Civil Procedure Rules, 2010* empowers this court to stay execution, either of its judgment or that of a court whose decision is being appealed from, pending appeal. The conditions to be met before stay is granted are provided by *Rule 6(2)* 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.”**

The applicant has not demonstrated that substantial loss would result from failure to grant stay. In the current circumstances of COVID-19, I find that the application was made in good time.

The respondent has stated that she is not a woman of straw and provided her job card as proof. She has however not produced an affidavit of means. That notwithstanding, I find that it would be in the interest of justice to grant conditional stay. The applicant has stated that it can settle the sum upon the appeal being dispensed with and therefore this court finds it fair that they pay half of the decretal sum to the respondent pending hearing and determination of the appeal. If appeal succeeds the respondent is capable of refunding such sum. It should also pay for the fees incurred in lawful execution.

Further, the applicant should expedite the process of the appeal so as not to deliberately delay the 1<sup>st</sup> respondent’s enjoyment of the full fruits of the judgment.

**S.M GITHINJI**

**JUDGE**

**DATED, SIGNED and DELIVERED at ELDORET this 17<sup>th</sup> day of September, 2020.**

In the presence of:-

Meritad Law Africa for the appellant absent

Mr. Kagunza for the respondent

Ms Gladys - Court assistant