



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUNGOMA.

CIVIL APPEAL NO. 87 OF 2020.

BUNGOMA COUNTY GOVERNMENT.....1ST APPELLANT

THE COUNTY SECRETARY.....2ND APPELLANT

HEAD OF PUBLIC SERVICE.....3RD APPELLANT

VERSUS.

ZIPPORAH NANJALA MANGOLI.....1ST RESPONDENT

PATRICIA WANJIKU MAINA.....2ND RESPONDENT

MAXMA & ZZ ENTREPRENEURS

BULDING & GENERAL CONTRACTORS.....3RD RESPONDENT

RULING.

This is an application dated 28.9.2020 by the applicants seeking the following orders;

a) *That this matter be certified urgent and be heard exparte in the first instance.*

b) *That there be an order of stay of execution of the ruling made on 25/98/2020 in the subordinate court vide BUNGOMA CMCC NO. 31 OF 2017 pending hearing and determination of this application interparties.*

c) *That there be an order of stay of execution of the ruling made on 25/08/2020 in the subordinate court vide BUNGOMA CMCC NO. 31 OF 2017 pending hearing and determination of the appeal herein.*

The grounds for the application are that;

1) **THAT** the Appellants herein were sued by the Respondents in BUNGOMA CMCC NO. 31 OF 2017 ZIPPORAH NANJALA MANGOLI & ANOTHER -Vs- THE COUNTY GOVERNMENT OF BUNGOMA & 2 OTHERS seeking for an order compelling the Appellants to issue and execute a contract with the Respondents, a declaration that there is a valid contract between the Appellants and the Respondents and that the Appellants breached and said contract, a permanent injunction order against the Appellants injuncting them, their workers employees or assignees from awarding the tender in issue to any other company and damages in the sum of Kshs.14,991,252.39/= for breach of contract.

2) **THAT** the Appellants filed a defence raising several triable issues.

3) **THAT** the Respondents filed an application for summary Judgment against the Appellants dated 30/01/2020, alleging that the Appellants' defence did not raise triable issues.

4) **THAT** in a detailed affidavit, the Appellants respondent to the Respondent's application dated 30/01/2020, contesting factual as well as legal matters raised in the Respondents' application.

5) **THAT** the Judgment was entered without giving the Appellants an opportunity to be heard, even when the matters raised were highly contested by the parties.

6) **THAT** the Respondents had sought for damages for breach of a nonexistent contract and also sought for the matter to be referred to arbitration for assessment of damages which was granted by the court and which means that the Respondent will ultimately have two Judgments from the same set of facts; from litigation and arbitration; which is contrary to the set principles of law.

7) **THAT** the Appellants were aggrieved by the aforesaid decision and have filed the appeal herein.

8) **THAT** the appeal is arguable and raises several triable issues with high chances of success.

9) **THAT** the summary Judgment entered is equivocal and the Respondents may execute the same in whatever manner they please.

The application is supported by the affidavit of Cypril Wayongo the Legal advisor to the 1st Applicant County Government of Bungoma sworn on 25.9.2000 where he reiterates the grounds of the application.

Zipporah Nanjala Mangoli filed a Replying Affidavit opposing the application. She depones that this is a money decree and same was referred to arbitration for assessment of further monies and costs. She depones that the applicant do not have an arguable appeal.

Counsel filed their respective submissions. I have considered the submissions by both parties, I am satisfied that there are sufficient grounds to grant stay of execution of the Judgment pending the hearing of this appeal which must be heard and concluded within 90 days from today's date. If not so concluded within that time limit, execution to proceed.

Dated at Bungoma this 30th day of October, 2020.

S.N. RIECHI

JUDGE