



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

CIVIL SUIT NO.134 OF 2009

BEDROCK HOLDINGS LIMITED.....PLAINTIFF/ APPLICANT

VERSUS

BEDROCK SECURITY SERVICES LIMITED.....1ST RESPONDENT

ERICK OUMA OKEYO.....2ND RESPONDENT

PATRICK OCHIENG ODIPO.....3RD RESPONDENT

RULING

1. The Plaintiff/Applicant's suit was on 01.08.19 dismissed with costs to the Respondents.
2. By Chamber Summons dated 24.08.2020 the Applicant prays for stay of execution of taxed costs pending the hearing and determination of a reference and appeal.
3. Mr. David Otieno, advocate for the Respondents in his replying affidavit sworn on 09.09.2020 opposes the application on the ground that no appeal has been filed and that a reference is no bar to execution.
4. I have carefully considered the reference in the light of the affidavits on record.
5. The substantive law of access for the relief sought is Order 42 (6) of the Civil Procedure Rules which provides:
 - (2) **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**
 - b. **That the application has been made without unreasonable delay; and**
 - c. **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. Substantial loss, in its various forms is the corner stone of best jurisdictions for granting a stay and the party seeking stay bears a specific burden regarding proof of substantial loss. (See **Rhoda Mukuma v John Abuoga[1988] eKLR**).
7. The reference relating to the taxed costs was dismissed by an order dated 21.10.2020. The Plaintiff/Applicant has not alleged or demonstrated that the Defendants/Respondents would be unable to adequately refund the taxed costs should the intended appeal ultimately succeed.
8. Consequently, the Chamber Summons dated 12.06.2020 is without merit and it is dismissed.

DATED AT KISUMU THIS 23rd DAY OF October 2020

T. W. CHERERE

JUDGE

Court Assistants - **Ms. Amondi/Ms. Okodoi**

For Applicant - **Mr. Otieno for Owiti, Otieno & Ragot Advocate**

For Respondent - **Mr. Mwamu for Mwamu & Co. Advocates**