



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO. 212 OF 2011**

**CLEMENT MUTURI KIGANO.....PLAINTIFF**

**VERSUS**

**SHENGLI ENGINEERING CONSTRUCTION**

**GROUP LIMITED.....DEFENDANT**

**RULING**

1) The subject matter of this ruling are the two applications.

The first application is the motion dated 12<sup>th</sup> October 2020 taken out by the plaintiff/applicant whereof he sought for the following orders:

- i. THAT leave be granted to the plaintiff to forthwith execute the decree passed by this court on 24<sup>th</sup> September 2020 as relates to payment of ksh. 10 million, which was secured by Bank Guarantee dated 14<sup>th</sup> June, 2013 issued by Citibank, N.A***
- ii. THAT Citibank, N.A be directed to forthwith pay to the plaintiff's advocates, M/as Amuga and Company Advocates the sum of Kenya Shillings Ten Million (Kshs.10,000,000/=)***
- iii. THAT the balance of the decretal sum plus interest and costs be paid upon ascertainment of costs by taxation or agreement between the parties.***
- iv. THAT such further or other order be granted as the court may deem fit in the circumstances of this case.***

2) The second motion dated 26.10.2020 is taken out by the defendant/ respondent whereof it sought to be granted the following orders:

- a) This application be certified as urgent and heard ex parte in the first instance.***
- b) There be a stay of execution of the judgment and decree of the honourable court rendered on 24<sup>th</sup> September 2020 pending the hearing and determination of this application.***
- c) There be a stay of execution of the judgment and decree of the honourable court rendered on 24<sup>th</sup> September 2020 pending the hearing and determination of the defendant/applicants appeal against the judgment and decree.***



chairman of the Parliamentary Departmental Committee on Justice and Legal Affairs Committee. He also averred that he owns highly valuable properties in Kenya.

13) I have carefully considered the material placed before this court by the plaintiff. The plaintiff did not place before this court evidence of earnings in form of payslips or bank statements. It is possible that the aforesaid documents may reveal that the plaintiff has committed his earnings to loan repayments leaving nothing to repay the decretal sum.

14) The plaintiff also failed to attach estimated values of the landed properties he owns. Even if he had done so, I doubt whether those properties would easily be disposed of to easily make a refund of the decretal sum. In the end I am convinced that the defendant has shown that it would suffer substantial loss if the order for stay is denied in that there is no credible evidence that the plaintiff is in a financial position to refund the decretal sum within a short notice should the appeal turn successful.

15) The **third** and final principle is the provision for security for the due performance of the decree. The defendant has stated that it is willing to abide by any conditions that this court may find just and equitable to issue. I think a reasonable order to make in the circumstances to direct the defendant to deposit the judgment sum in an interest earning account in the joint names of learned advocates.

**16) In the end the motion dated 26.10.2020 is allowed.**

**Consequently,**

**(a) An order for stay of the execution of the decree pending appeal is granted on condition that the defendant/applicant deposits the principal decretal sum of ksh.10,030,534/= in an interest earning account in the joint names of the firms of advocates appearing in this suit within a period of 45 days from the date hereof. In default the order for stay shall automatically lapse. Costs of the motion to abide the outcome of the appeal.**

17) In the motion dated 12<sup>th</sup> October 2020, the main order sought by the plaintiff is for leave to execute the decree passed by this court on 24<sup>th</sup> September 2020 as relates to payment of kshs.10,000,000/= which amount was secured by bank guarantee dated 14<sup>th</sup> June 2013, by Citibank N.A and that the balance of the decretal sum plus interest and costs be paid upon ascertainment of costs by taxation or agreement between the parties.

18) In the supporting affidavit sworn by Paul Amuga, learned Advocate for the plaintiff, it is deponed that it will take quite some time for the plaintiff to have his bill of costs, taxed by the court. It is further deponed that since the money is not accruing any interest and since there is no order staying execution of the decree it is in the interest of both parties that the said sum be paid to the plaintiff forthwith. Mr. Achoki, learned advocate for the defendant/respondent argued that the motion is premature.

**19) The plaintiffs application is based on Section 94 of the Civil Procedure Act** where the court has a discretionary power to allow execution of decree it passed before costs are ascertained. The courts discretion can be exercised if it considers it necessary.

20) There is no doubt that this court has already made a granting an order for stay of execution of the decree pending appeal. In the circumstances this court finds it not necessary to grant the order for execution before taxation.

**21) In the end the motion dated 12.10.2020 if found to be without merit. The same is dismissed with each party meeting its own costs on the motion.**

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 17<sup>th</sup> day of December, 2020.

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**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

..... for the Defendant