



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 518 OF 2010

BRIGADIER KENNETH OKOKI DINDI.....PLAINTIFF

VERSUS

THE STANDARD LIMITED.....DEFENDANT

RULING

The plaintiff herein has a judgment in his favour against the defendant delivered on 28th June, 2018. Following that Judgment, the defendant has filed an application by way of Notice of Motion under Section 65 of the Civil Procedure Act, Order 42 Rule 6 (1), (2) and (4) and Order 51 rule 1 of the Civil Procedure Rules, for the substantive order that there be a stay of execution pending the filing herein and determination of an intended appeal from the said judgment.

The application is supported by an affidavit sworn by the Head of Legal Department in the defendant company, alongside grounds set out on the face of the application. Going by the grounds set out in the application, the defendant intends to appeal the judgment on the issue of quantum and has filed and served a valid notice of appeal. The defendant is also ready and willing to deposit the entire decretal sum as security in a joint interest earning account opened by the parties' advocates. The decretal sum is said to be colossal and the plaintiff, it is feared, is unlikely to repay the same in the event the decree is executed and the appeal succeeds. In that event, the appeal will be rendered nugatory.

The application is opposed and there is a replying affidavit sworn by the plaintiff herein. There is also a supplementary affidavit filed as a rejoinder to the replying affidavit. Both counsel have filed submissions which I have had time to read.

Order 42 rule 6 is central to the determination of this application. The judgment having been delivered on 28th June, 2018 the notice of appeal was filed on 4th July, 2018. The present application was however filed on 14th November, 2018 which was about 4 and ½ months after the delivery of the said judgment.

I consider however that, the decree was issued on 13th November, 2018 and therefore the application was filed timeously. The defendant has submitted that it is likely to suffer substantial loss, because the plaintiff is a person of unknown and undisclosed financial means. In the judgment of this court, the court observed in part as follows,

“The plaintiff is a military officer holding the title of Brigadier and Director of Military prosecutions. In his submissions filed on his behalf by his advocate his responsibilities and position have been compared to Director of Public Prosecutions in civilian courts..... A director of military prosecutions is placed in a position that should be the envy of any individual in the forces and outside. The court takes judicial notice of the current prosecutions driven by the Director of Public Prosecution in this country and the implication across the body politic and public at large.”

A person's employment and position may not be the absolute guide as to his financial capacity. However, there is no suggestion whatsoever that the plaintiff is a man straw incapable of refunding the decretal sum in the event the same is paid to him and the appeal succeeds. I do not deem it necessary to revisit the facts and evidence adduced during the trial because the Court of Appeal will have occasion to address the same.

I observe however that the appeal being against quantum only, the intended appeal may not lead to a complete reversal of the awards made. I note that the defendant has offered to deposit the entire sum in an interest earning account as security. I am enjoined to balance the interest of the plaintiff who has a judgment in his favour, and the defendant who has a right of appeal and has expressed that right in the form of a notice of appeal already filed.

In the circumstances, I shall, as I hereby do allow the defendants application on the following terms.

- a. The defendant shall pay the plaintiff a sum of Kenya Shillings 6 Million (Kshs. 6,000,000/=).
- b. The balance of the decretal sum shall be invested in an interest earning account in the joint names of the advocates on record.
- c. The above conditions shall be complied with within 30 days from the date of this ruling.

The costs shall abide the decision of the appeal.

Dated, signed and delivered at Nairobi this **30th** day of **July**, 2019

A.MBOGHOLI MSAGHA

JUDGE