

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL APPEALS NOS. 64 AND 68 OF 2019 (CONSOLIDATED)

1. ANTI-COUNTERFEIT AGENCY

2. CROWN PAINTS.....APPELLANTS

VERSUS

PETER MBARIA KARIUKI.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

THE INSPECTOR-GENERAL OF

THE NATIONAL POLICE SERVICE.....3RD RESPONDENT

ANTI-COUNTERFEIT AGENCY.....4TH RESPONDENT

(Being an appeal from the judgment and decree of the Hon. H. Wandere Senior Principal Magistrate (SPM), in Kakamega CMCCC No. 264 of 2016 of 11th June 2019)

RULING

1. The appeals herein arose from a judgment that was delivered in Kakamega CMCCC No. 264 of 2016, a suit for malicious prosecution, where the trial court awarded general damages of Kshs. 3, 000, 000.00 and special damages of Kshs. 120, 000.00, plus costs. They said appeals were consolidated on 27th June 2019.
2. The Motions, dated 14th and 20th June 2019, are for stay of execution of the said judgment and decree pending the hearing and determination of the instant appeal. The appellants argue that they have arguable appeals on merits, and failure to grant the stay sought could render their appeals academic.
3. The applications are opposed, there are grounds of opposition and a replying affidavit filed by the first respondent. He argues that the application are misconceived, do not raise triable issues, are not supported by evidence, are meant to deny him the fruits of his labour and costs have not yet been taxed.
4. The applications were argued on 27th June 2019. Mr. Adera and Mr. Ligame urged the case for the appellants. Mr. Adera, for the Anti-Counterfeit Agency, argued that his client did not have assets, save for tools of trade as it was a government agency. Mr. Ligame for crown paint submitted that it was only his client against who execution could issue. He stated that the judgement did not apportion liability. He urged that security should not be punitive. He submitted that it would be discriminatory to require one judgment-debtor to furnish security but not the other. Mr. Abok for the 1st respondent stated that he had no problem with stay being granted, but submitted that security must be furnished.
5. As the application for stay is conceded, the only thing for me to determine is whether or not I should impose any conditions. I note that the decree was passed against several defendants. Liability was not apportioned, and, I will have to bear that in mind even as I consider the matter. I note that one appellant is a state agency, while the other is a manufacturing/commercial entity. It is often remarked that governments never go bankrupt. The risk of a successful litigant not being able to enforce a decree against it are, therefore, remote. For commercial agencies, the position should be different. The financial health of the firm is unknown. It would be prudent in the circumstances to require it to offer some form of security.
6. In the end, I shall hereby order that there be stay of the judgement and decree of the trial court in Kakamega CMCCC No. 64 of 2016 pending appeal. Crown Paints to deposit Kshs. 200,000.00 in court, or to be held in joint account of its lawyers and those for the 1st respondent, pending appeal. The security for due performance to be furnished within thirty (30) days.
7. It is so ordered.

DATED, SIGNED and DELIVERED at KAKAMEGA this 26th DAY OF July, 2019

W. MUSYOKA

JUDGE