

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 51 OF 2019

VICTORY CONSTRUCTION COMPANY LIMITED.....APPLICANT

VERSUS

MARS SECURITY GUARDS LIMITED.....RESPONDENT

RULING

There is a judgment in favour of the respondent in the lower court delivered on 10th January, 2019. The appellant herein was aggrieved by the said judgment and lodged a Memorandum of Appeal on 5th February, 2019.

Two days after the filing of the Memorandum of Appeal the appellant filed the present application. The steps taken by the appellant were timeous. The application before me seeks a stay of execution of the lower court judgment pending the hearing and determination of the appeal. The application is by way of Notice of Motion under Sections 1A, 1B, 3A and 65 of the Civil Procedure Act and Order 42 of the Civil Procedure Rules.

The application is supported by an affidavit sworn by a director of the applicant, to which there is a replying affidavit sworn by an accountant of the respondent opposing the application, followed by a supplementary affidavit to the supporting affidavit.

The applicant is bound to show that substantial loss may follow if the order is not granted. I have considered the Memorandum of Appeal and I believe there is an arguable appeal. The applicant has offered to post security within a reasonable time, and I believe that is a satisfactory offer in line with the provisions of law relating to stay of execution.

Accordingly, this application is allowed on condition that, the applicant shall deposit the decretal sum in an interest earning account, in the names of both advocates for the parties within 30 days from the date of this ruling. The cost shall be on appeal.

Dated, signed and delivered at Nairobi this 24th Day of July, 2019.

A.MBOGHOLI MSAGHA

JUDGE