

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC APPLICATION NO. 600 OF 2019

INTEX CONSTRUCTION LIMITEDPLAINTIFF/APPLICANT

VERSUS

CMC AVIATION LIMITED RESPONDENT

RULING

This is a Notice of Motion by the applicant under Order 42 rule 6, Order 50 Rule 5 and Order 51 Rule 1 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the Civil Procedure Act, seeking the substantive order that, there be a stay of execution of the lower court judgment delivered on 7th February, 2019. There is also an order sought that leave be granted to appeal out of time, and the draft Memorandum of Appeal be deemed as filed.

Several grounds have been set out on the face of the application together with the supporting affidavit sworn by the advocate for the applicant. The application is opposed and there is a replying affidavit sworn by the Director of Quality Assurance of the defendant.

There is evidence that the applicant made an application in the lower court to reopen their case, where it is said there is a pending ruling. Whatever the case, it is alleged that the applicant voluntarily closed their case in the lower court and in any case, there has been a delay of seven months before any application was lodged in this court.

The principles of justice advocate the rights of parties to fair trial. The interests of the parties however, have to be taken into consideration so that all parties have their day in court. That is the whole essence of access to justice. The applicant has indicated that the amount of Kshs. 1.4 million has been deposited and therefore no prejudice shall be occasioned to the respondent. This has not been disputed. I have noted the submission that the delay in lodging this application has not been adequately explained. A look at the ruling of the lower court shows clearly that it was delivered on “**7th February, 2019 in the absence of the parties**”.

The delay therefore cannot be attributed to the applicant. In the interest of justice, I am persuaded that the application should be allowed and therefore grant orders as prayed. The costs shall abide by the outcome of the appeal.

Dated, signed and delivered at Nairobi this 27th Day of November, 2019.

A. MBOGHOLI MSAGHA

JUDGE