



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. 457 OF 2019**

**REYNOLDS CONSTRUCTION COMPANY.....APPELLANT**

**VERSUS**

**COBRA SECURITY COMPANY LIMITED.....RESPONDENT**

**RULING**

There is a pending Judgment in the lower court which is seized of the main trial in CMCC No 7543 of 2013. The plaintiff closed its case and the defendant presented its witness who gave evidence in chief but was not cross examined for reasons that appear in the record herein. By an application dated 7<sup>th</sup> August, 2019 appellant/applicant sought orders for a stay of proceedings and the writing of the judgment, pending the hearing and determination of the appeal lodged following the ruling of the lower court, whereby the proceedings were terminated and judgment reserved before the defence witness was cross-examined.

The application is supported by grounds set out on the face of the application alongside an affidavit sworn by the Operations Manager of the appellant/applicant. The application is opposed and there are grounds of opposition alongside a replying affidavit sworn by the advocate for the respondent. Both parties have also addressed the court orally on the application.

I have, in considering the merits of the application, related the grounds advanced by the appellant/applicant to the Memorandum of Appeal filed on 7<sup>th</sup> August, 2019. Without saying much so as not to cause any prejudice on the positions of the parties, what this court is being asked is, to determine whether or not the order by the lower court to close the case before the defence witness was cross-examined is procedural. By asking this court to direct the Chief Magistrate's court to adopt the respondent's defence witness testimony as tendered, is definitely asking that I interfere with the decisional independence of the trial court, which in my view is not appropriate in view of the pending appeal.

The respondent has raised an important ground that the application is premature. This court would be stepping beyond its limit if it were to order that the trial court should not deliver its judgment on the evidence of the parties already on record.

In the event the appellant is dissatisfied with the final judgment then there will be an opportunity to address all grievances including what has been stated in the present memorandum of appeal. It shall definitely mitigate against the overriding objective set out in sections 1A, 1B and 3A of the Civil Procedure Act if I were to interfere with the procedure in the lower court.

With those brief remarks I am unable to agree with the appellant in the said application and therefore dismiss the application lodged by the appellant. The costs shall be in the cause.

***Dated, signed and delivered at Nairobi this 19<sup>th</sup> day of December, 2019.***

**A. MBOGHOLI MSAGHA**

**JUDGE**