

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL APPEAL NO. 532 OF 2016

NDOMBI TOM WACHAKANA OSOLIKA.....APPLICANT

VERSUS

THE DISCIPLINARY COMMITTEE OF

THE LAW SOCIETY OF KENYA.....RESPONDENT

RULING

1. The Notice of Motion application dated 11th August, 2016 seeks orders that **“there be a stay of execution of the tribunal orders of 1st August, 2016 pending the hearing of this application/appeal.”**

2. The application is predicated on the grounds stated therein and is supported by the affidavit and a further affidavit sworn by the Applicant. The Applicant stated that there were errors made in the ruling made by the tribunal and stated that he has an arguable appeal.

3. The application is opposed. It is stated in the replying affidavit that the appeal lacks merits and that the Applicant is not entitled to an order of stay of execution. It is further stated that the Applicant should provide security for the entire judgment amount.

4. The application was canvassed by way of written submissions. I have considered the said submissions.

5. Order 42 rule 6 (2) of the Civil Procedure Rules, 2010 provides as follows:

“No order for stay of execution shall be made under sub-rule (1) unless –

a. The court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

b. Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

6. The ruling of the tribunal that is the subject of the appeal was delivered on 1st August, 2016. The application under consideration was filed on 11th August, 2016. The application was filed timeously.

7. The affidavit in support of the application has mainly dealt with the merits of the Appeal. There is no evidence of the substantial loss to be suffered nor any security offered for the due performance of the decree. However, the Applicant has offered security in the written submissions and stated that he has a professional indemnity cover of Ksh.20 Million with Heritage Insurance Company.

8. To balance the interests of both parties herein, I allow the application on condition that the Applicant do deposit in court the sum of Ksh.20,000,000/= or security for the same in the form of bank guarantee or property equal to the said sum within 30 days from the date hereof. Costs in cause.

Date, signed and delivered at Nairobi this 29th day of January 2018

B. THURANIRA JADEN

JUDGE