



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL SUIT NO. 598 OF 2010

TAIB ALI TAIB.....PLAINTIFF/RESPONDENT

- V E R S U S -

NATION MEDIA GROUP.....DEFENDANT /APPLICANT

RULING

1. Nation Media group, the defendant/applicant herein, took out the motion dated 17th October 2017 in which it sought for the following orders:

- 1. THAT this application be certified as urgent and service at first instance be dispensed with.***
- 2. THAT there be a stay of execution of the judgement delivered by this Honourable court on the 10th February 2017 pending the hearing and determination of this application inter-partes.***
- 3. THAT there be a stay of execution of the aforementioned judgement pending the hearing and determination of the appeal filed.***
- 4. THAT the cost of this application be provided for.***

The motion is supported by the affidavit of Sekou Owino.

2. The respondents filed the replying affidavit of Taib Ali Taib to oppose the motion. I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the application. I have also considered the rival oral submissions.

3) The applicant avers that the respondent has threatened to execute the decree, therefore there is need to maintain the *status quo* by granting an order for stay. It is also argued that unless the order is granted, the appeal will be rendered nugatory since the respondent will proceed with attachment. The respondent opposed the motion arguing that the application for stay was filed in bad faith and with the sole intention of preventing the respondent from enjoying the fruits of his judgment. The respondent also pointed out that if the court is to find merit in the application then the judgement sum must be deposited in court as a condition.

4) The principles to be considered in determining an application for stay are well stated under Order 42 of

the Civil Procedure Rules. First, an applicant must show the substantial loss it would suffer if the order for stay is denied. Secondly, the application for stay should be filed without unreasonable delay. Thirdly that the court should consider the provision of security for the due performance of the decree.

5) On the first principle, the applicant is of the view that it would suffer substantial loss if the order for stay is denied because its assets will be attached ,which loss will be further compounded by the fact that there is no evidence that if the respondent is paid the decretal sum he would be in a position to refund if the appeal turns successful. The respondent on the other hand submits that, he is a person of means and able to refund the decretal sum if the appeal turns successful. With respect, I am convinced that the applicant has shown that it would suffer substantial loss if the order for stay of execution is denied.

6) The second principle is that the application should be filed without unreasonable delay. It is apparent on record, that judgement was delivered on 10.02.2017 while the motion was filed on 17.10.2017. I am satisfied that the motion was not timeously filed.

7) The third principle is the provision of security for the due performance of the decree. The applicant is saying that, it is willing to furnish security. The respondent on the other hand is saying that if this court is inclined to grant the order for stay then, the same should be granted on condition that the applicant pays the decretal sum. On my part, I think a fair order on the issue touching on security, is to order which I hereby direct, that the applicant deposits the decretal sum of Ksh 10,500,000/- in an interest earning account in the joint names of the advocates and or firms of advocates within 30 days from the date hereof. In default the motion dated 17.10.2017 will be deemed as having been dismissed

8) Costs of the motion to abide the outcome of the appeal.

Dated, Signed and Delivered in open court this 26th day of January, 2018.

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent