

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 598 OF 2010

TAIB ALI TAIBPLAINTIFF

- V E R S U S -

NATION MEDIA GROUP LIMITED..... DEFENDANT

RULING

1. On 26th January 2018, this court granted **Nation Media Group**, the defendant herein, an order for stay of execution of the decree pending appeal on condition that it deposits a sum of ksh.10,500,000/= in an interest earning account in the joint names of learned advocates or firms of advocates within 30 days as security for the due performance of the decree. The defendant was unable to deposit the aforesaid sum within the time prescribed. The defendant has now taken out the motion dated 3rd April 2018 whereof it sought for an extension of time by 7 days to comply with the condition to deposit the security.

2. The aforesaid motion is supported by the affidavit of Anastacia Mululu. When served with the motion, **Taib Ali Taib**, the plaintiff herein, filed grounds of opposition and a replying affidavit he swore to resist the motion.

3. 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 motion. Miss Kemunto, learned advocate for the defendant averred that the period fixed for the defendant to make a deposit lapsed due to the fact that the defendant was unable to secure the colossal amount of ksh.10,500,000/=. The defendant further stated that it has now successfully secured the funds in full and is ready to make the deposit if given an extension of time to do so. The defendant also argued that it took time to also open the bank account since the account opening forms took time to execute the same. For the above reasons, the defendant urged this court to exercise its discretion in its favour by granting the orders.

4. The plaintiff strenuously opposed the motion arguing that the application failed to meet the requirements of an application seeking for extension of time to deposit the security.

5. Mr. Ochieng, learned advocate for the plaintiff argued that the defendant has not given any plausible reason to convince this court to extend time for it to deposit the decretal sum as requested. The learned advocate further argued that the reason of lack of funds is not a good reason to enable this court exercise its discretion in favour of the defendant. The plaintiff further contested the averments made by learned advocate in an affidavit filed in support of the motion. It was argued that the learned advocate should not have deponed on contested matters.

6. The main prayer the plaintiff has requested this court to grant is to extend time to enable it deposit the decretal sum as security for the due performance of the decree. The decision as to whether or not to extend time is the unfettered discretion of the court. The defendant has put forward two main reasons which delayed it from depositing the amount ordered by court. However the main reason is that, it took time to secure the money since it is a colossal amount. The plaintiff does not deny the fact that the amount is colossal. His contention is that it is not one of those reasons envisaged by law to be used by the court to extend time.

7. With respect, I do not agree with the plaintiff's argument. I have already stated that the court has unfettered discretion to extend time fixed by court so long as a party has given sufficient reason. Mr. Ochieng, further argued that the court lacked jurisdiction to extend time when the time fixed has lapsed. With respect, I do not agree with that submission. A careful reading of Order 50 rule 6 of the Civil Procedure Rules will reveal that the court has power to extend time even when the application for extension of time is made after the lapse of the time fixed.

8. In the end, I am satisfied that there is need to grant the order sought. Consequently I grant the defendant/applicant ten (10) days to deposit the decretal sum as ordered on 26th January 2018.

9. A fair order on costs is to direct, which I hereby do, that each party meets its own costs.

Dated, Signed and Delivered in open court this 24th day of May, 2018.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant