

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL 211 OF 2018

BRINKS SECURITY SERVICES LIMITED APPELLANT

VERSUS

CHRISANTUS SHIWUNDU NANGIRARESPONDENT

(Being an appeal against the Ruling of the Hon. D.A. Ocharo SRM, delivered in court on 5th April, 2018 in Nairobi CMCC No. 5350 of 2014)

RULING

The appellant was the defendant in the lower court while the respondent was the plaintiff. Judgment was entered against the appellant prompting an application to set aside the interlocutory judgment upon which, on 5th April, 2018 the lower court directed that the appellant deposits half of the decretal sum in court within 30 days pending the hearing and determination of this appeal.

It is that ruling that aggrieved the appellant leading to the present application. In this application, the appellant seeks an order that execution of the lower court order be stayed, in particular the deposit of half of the decretal sum. In the ruling of the lower court, the interlocutory judgment was set aside and the appellant granted unconditional leave to defend the suit, only that the said deposit should be done.

This application is by way of Notice of Motion under Sections 1A, 3A of the Civil Procedure Act, Order 42 Rule 6 and Order 51 of the Civil Procedure Rules. From the record, the application was filed timeously because the said ruling was given on 5th April, 2018 while the application was filed on 30th of the same month.

The interlocutory judgment having been set aside and the appellant granted unconditional leave to defend the suit, the substance of the decree was also affected. The appellant therefore has an arguable appeal which may be rendered nugatory if stay is not granted. Further, no prejudice has been demonstrated shall befall the respondent if the order sought is not granted.

I have looked at the submissions of both parties and the cited authorities. I am persuaded that the order sought should be granted and therefore I allow the application for stay as prayed. The costs shall be on appeal.

Dated, signed and delivered at Nairobi this 27th day of November, 2018.

A. MBOGHOLI MSAGHA

JUDGE