

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

CIVIL CASE NO. 450 OF 2013

BELL PACIFIC INTERNATIONAL LIMITED.....PLAINTIFF

VERSUS

ECOBANK KENYA LIMITED.....DEFENDANT

RULING

[1] The Defendant's Notice of Motion dated **17 March 2017** was filed pursuant to **Section 3A, 34(1), 63(e) of the Civil Procedure Act, Chapter 21 of the Laws of Kenya, and Order 51 Rule 1 of the Civil Procedure Rules, 2010**, for stay of execution of the Judgment delivered herein on **24 February 2017** together with the resultant Decree for a period of 60 days from the date of the order. The application was predicated on the grounds that the Defendant is aggrieved by the Court's decision and intends to file an appeal against the whole of the said decision; to which end, it has already filed a Notice of Appeal and requested for a certified copy of the proceedings and Judgment. It was thus the Defendant's contention that the intended appeal would be rendered nugatory if the Plaintiff proceeds to commence the execution proceedings.

[2] The application was supported by the affidavit of the Defendant's Legal Officer, **Jack Kimathi**, in which the aforesaid grounds were explicated and supported by copies of the Judgment, Notice of Appeal and correspondence to the Court requesting for typed and certified copies of proceedings and Judgment. It was further averred that this is only a temporary measure to enable the Defendant make a substantive application before the Court of Appeal for stay of execution once supplied with the requisite documentation.

[3] The application was opposed by the Plaintiff and a Replying Affidavit in response thereto was filed herein on **21 March 2017**, sworn by the Plaintiff's Chairman and Managing Director, **Joseph Wamwayi Odundo**. The Plaintiff's contention was that the application is a waste of the Court's time granted that no Decree has been issued thus far. It was further averred that no execution could possibly take place before taxation of the Plaintiff's Bill of Costs. It was further posited that the Defendant has not demonstrated that the Plaintiff is incapable of refunding the decretal sum should he be required to do so.

[4] Having considered the application, the affidavits and the written submissions filed herein, it is manifest that a Notice of Appeal has indeed been filed by the Defendant dated **6 March 2017**. It is also manifest from the Notice of Motion and the grounds set out therein that the stay sought is only a temporary one, for 60 days to be precise, to enable the Defendant file an application in the Court of Appeal seeking stay of execution pending appeal. Accordingly, it will be for the Court of Appeal to determine the merit or otherwise of the intended application for stay of execution pending appeal, including the question of security that the Plaintiff raised herein. In the interim, it is my finding that sufficient cause has been shown to warrant the issuance of the orders sought. Besides, the Decree is yet to be drawn and the Bill of Costs taxed. Thus, it is unlikely that the Plaintiff will suffer any prejudice in the intervening period. Accordingly I would grant the orders sought in terms of Prayers (3) and (4) of the Defendant's Notice of Motion dated **17 March 2017**.

[5] I note that taxation has been scheduled for **13 April 2017**. There is no reason, why the same should

not proceed as scheduled, as what has been stayed is the execution itself. Thus, my resultant orders in respect of the Notice of Motion dated **17 March 2017** are as hereunder:

[a] That the execution of the Judgment delivered herein on 24 February 2017 be and is hereby stayed for a period of 60 days from the date hereof;

[b] That the costs of the application be in the cause.

Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 12TH APRIL, 2017

OLGA SEWE

JUDGE

DATED, COUNTERSIGNED AND DELIVERED AT NAIROBI THIS 12TH DAY OF APRIL 2017

RACHEL NG'ETICH

JUDGE