



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL APPEAL NO. 173 OF 2017**

**VEGPRO KENYA LIMITED .....APPELLANT**

**- V E R S U S -**

**PURITY GATHIGIA .....RESPONDENT**

**RULING**

1) The subject matter of this ruling is the motion dated 28.4.2017 in which Vegro (K) Ltd the applicant herein, is basically praying for an order for stay of execution of the trial court's decree pending appeal. The motion is supported by the affidavit of Eva Okallo. When served, Purity Githigia, the respondent herein did not deem it fit to file any response. When the motion came up for interpartes hearing, learned counsels appearing in the matter recorded a consent order to have the motion disposed of by written submissions. At the time of writing this ruling, the appellant/applicant was the only party who had filed its submissions.

2) I have considered the grounds stated on the face of the motion and the facts deponed in the supporting affidavit plus the written submissions. It is the submission of the applicant that unless the order for stay is granted it would suffer substantial loss in that, if the decretal sum is paid to the respondent it would be impossible to recover the amount because the respondent has no known source of income. This averment is not controverted by the respondent and since I have no reason to doubt the veracity I of the applicant's assertion. I am convinced that the applicant's submission is meritorious. The applicant has also stated that it is ready and willing to offer any security this court may order it to make.

3) The principles to be considered in determining an application for stay are clearly stated under Order 42 Rule 6 of the Civil Procedure Rules. First, an applicant must show the substantial loss it would suffer if the order for stay is denied. Secondly, an applicant must show that the application for stay was timeously filed. Thirdly, that the provision for security must be considered.

4) There is uncontroverted submission that the respondent may not be in a position to repay the decretal sum if the appeal turns successful. I am therefore convinced that the applicant has satisfied this court that it stands to suffer substantial loss if it is denied the order for stay.

5) It is apparent from the record that the trial court delivered its judgment on 30.3.17 and the motion for stay was filed on 28.4.2017. I am satisfied that the application for stay was filed without unreasonable delay.

6) In the end, I grant the order for stay of execution pending appeal on condition that the applicant deposits the decretal sum of kshs.355,200/= in an interest earning account in the joint names of the advocates or firms of advocates within 30 days from the date hereof. In default the motion to be deemed as having been dismissed.

Dated, Signed and Delivered in open court this 29<sup>th</sup> day of September, 2017.

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Appellant

..... for the Respondent