



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. 415 OF 2013

KENYA POWER & LIGHTING COMPANY LIMITED.....APPELLANT

VERSUS

HEZKIAH NGUGI.....RESPONDENT

RULING

The Respondent/Applicant moved the court by way of a Notice of Motion dated 6th October 2017 seeking orders that the funds deposited by an order of the Chief Magistrate's court in cmcc No 11890 of 2004 at Milimani Commercial court Branch Nairobi in Account No [...] in the joint names of Mbugua & Mbugua Advocates, plus interests be released to the Respondent.

The Respondent/applicant has also sought for costs of the application.

The application is made on the grounds that the decretal sum referred to above was deposited as a condition precedent for stay of execution pending the hearing and determination of the Appeal which Appeal has been heard and determined in favour of the Respondent as the same was dismissed with costs.

That arising from the dismissal of the said Appeal on the 22nd September, 2017, it is met and proper for this Honourable court to order the release of the said deposit to the Respondent through his Advocates on record.

The application is opposed by way of grounds of opposition dated 9/11/2017 and filed in court on the same day. Counsel for the Respondent contended that they have filed a Notice of Appeal and the same has been served upon the Respondent and therefore releasing the funds will prejudice the Appellant because there is no evidence that the Respondent will be able to refund the money.

The court has considered the application and the material before it. The record shows that the Appeal was dismissed on 22nd day of September 2017. Though the Appellant submitted that it has filed a Notice of Appeal against the said Judgment, a copy of the same was not exhibited to the court.

Secondly, even if an Appeal has been filed, it is trite law that an Appeal does not operate as a stay of execution unless otherwise the court orders. No stay of execution has been granted pending the hearing and determination of the Appeal before the court of Appeal.

It is also worth nothing that, the money sought to be released was deposited pending the determination of the Appeal herein and once the same was determined the reason for the said deposit being maintained in the joint account is now dissipated and rendered irrelevant.

In the premises, it is only fair and just that the said funds together with the accrued interest be released to the Respondent.

I therefore allow the application dated 6/10/2017 with costs to the Respondent.

It is so ordered.

Dated, Signed and Delivered at Nairobi this 17th Day of **November, 2017.**

.....

L. NJUGUNA

JUDGE

In the Presence of

..... For the Appellant/Respondent

..... For the Respondent/Applicant