



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
CIVIL DIVISION
HIGH COURT CIVIL APPEAL NO. 550 OF 2012
CHINA JIANGSU INTERNATIONAL LIMITED.....APPELLANT
VERSUS
HENRY ADEMA ARIGULARESPONDENT

RULING

1. The application dated 16th May, 2017 seeks orders that a stay of execution of the decree issued in Milimani CMCC No. 8983 of 2006 and or the security deposited in Milimani CMCC No. 8983 of 2006 of Ksh.300,000/= do remain in court pending the hearing and determination of this application.

2. It is stated in the replying affidavit that on 15th May, 2017. That the lower court on application by the Respondent ordered that the sum of Ksh.300,000/= deposited in court as security be released to the Respondent. It is averred that the appeal is still pending and the release of the deposit will render the appeal nugatory. It is further stated that the sum of Ksh.148,200.70 has already been taken from the Appellant by the Respondent.

3. The application is opposed. The Respondent filed the grounds of objection herein dated 26th May, 2017 which state as follows:

1. That this court has no jurisdiction to entertain the said application.

2. That there is no relationship between this Appeal and the challenged orders.

3. That there is repositing in a court of law inherent jurisdiction/powers to vary, discharge or review orders made by such court to check abuse of the courts processes. A jurisdiction the lower court properly exercised.

4. That the order directing the release of the sum of Kshs.300,000/= deposited in court was made on two (2) substantive applications adjudicated upon by the lower court. The Appellant's remedy would be to appeal the ruling and order and seek stay in such forum and not to seek redress in this appeal.

5. That the Appellant has preferred to litigate side issues and not pursue the substantive Appeal herein to determine the issue in controversy in this Appeal for once and for all. This

in itself is an abuse of the court process.

6. That Appellant's conduct of proceeding herein is a classic example of abuse of court process calling for stoppage by this honourable court

7. That the Appeal herein was lodged on 23rd October, 2012. It is now well over Four (4) years and the Appellant continues to litigate irrelevant applications while taking no steps to prosecute the main Appeal notwithstanding the fact that this appeal was only reinstated on technicalities.

8. That there ought to be a finality to litigation. The Appellant is guilty of material non-disclosure. The Appellant/ Applicant has not disclosed that it lodged an application which was dismissed simultaneously with the order allowing the respondent's application.

4. During the hearing of the application the learned counsel for the respective parties opted to file written submissions. I have considered the said submissions.

5. The Applicant has essentially sought an order of stay of execution. Order 42 rule 6(2) of the Civil Procedure Rules, 2010 is therefore applicable. The said order provides as follows:

“No order for stay of execution shall be made under sub-rule (1) unless –

(a) The court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

(b) Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

6. The factual matters herein have not been controverted by any affidavit in response. It is apparent that the security deposited was ordered to be released while the appeal herein is still pending. Although it is stated that the release of the deposit will render the appeal nugatory, there are no allegations that the Respondent is not capable of refunding the decretal sum. It's therefore not been shown that the Applicant will suffer substantial loss. It seems no steps have also been taken to prosecute this appeal since the delivery of the ruling herein dated 20th July, 2016.

7. With the foregoing, I find no merits in the application and dismiss the same with costs.

Dated, signed and delivered at Nairobi this 15th day of Nov., 2017

B. THURANIRA JADEN

JUDGE