



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

MISC. APPL.341 OF 2015

JRS GROUP COMPANY LIMITED.....APPLICANT

VERSUS

BOB OLWENY OYWAH.....RESPONDENT

R U L I N G

1. The applicant's application dated 1.12.2015 prays for the following reliefs:

- a. **that the stay of execution of the decree and judgment delivered on 23.10.15 pending the hearing and determination of the appeal;**
- b. **time of lodging the appeal be extended;**

2. The same is supported by the amended affidavit of Vincent Atong the Human Resource Manager of the applicant dated 1.12.2015. Substantially the applicant avers that they did not attend court when the judgment was delivered and that they only got to know the facts of the case when the auctioneers proclaimed its goods. He goes further to state that the costs awarded to the respondent have not in any event been assessed.

3. On its part the respondent did file grounds of opposition in which he argued that the application was an abuse of the court process and it only desires to stop the respondent from enjoying the fruits of the judgment.

4. I have carefully perused the application together with the supporting affidavit. Its clear that judgment was delivered against the applicant on 2.3.2015 in the absence of the applicant and or his advocate. That position has not been controverted by the respondent. It is clear also that the applicant's goods were proclaimed as per the attached proclamation. The respondent was awarded a sum of Kshs.250,000/= together with costs.

5. The nature of this application calls for the discretion of the court to be exercised under Order 42 Rule 6 Civil Procedure Rules. Stay of execution is granted on various reasons but of utmost importance is whether the appeal shall be rendered nugatory and whether the same has been made without any undue delay.

6. This court is satisfied that the application was made without much delay as it appears that the proclamation was made on 24.11.2015 when the applicant got to know the court's verdict. As earlier found and from the records, there was no notice given to the applicant on the date of the judgment.

7. Consequently and without delving into whether the appeal is meritorious or not as that would be determined later I shall allow the application as follows:

1. Leave is hereby granted to the applicant to lodge its appeal within 14 days from the date of this ruling;
2. there be stay of execution against the applicant pending the hearing and determination of the said appeal.
3. Meanwhile and within 30 days from the date of the delivery of this ruling the applicant shall deposit the sum of Kshs.100,000/= in a joint interest earning account in the names of the two law firms representing the parties herein.
4. The auctioneers costs, as well as the costs of the application shall await the outcome of the appeal.
5. In default of order 3 above the respondent shall have the liberty to execute against the applicant for the whole amount
6. costs in the cause.

Dated, signed and delivered this 23rd day of March 2016

H. K. CHEMITEI

J U D G E