



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS CIVIL APPLICATION NO. 361 OF 2015**

**CASEMENT FABRICATION WORKS LIMITED.....PLAINTIFF**

**VERSUS**

**AGRI HARDWARES (E.A) LIMITED.....1<sup>ST</sup> RESPONDENT**

**DAVID KAMAU**

**GLADYS NJERI**

**CASEMENT INDUSTRIES LIMITED..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Casement Fabrication Works Ltd, the applicant herein took out the motion dated 21<sup>st</sup> August 2015 in which it sought for the following orders:
  - i. *That leave be granted to the applicant to file an application for leave to file appeal out of time.*
  - ii. *That the decree holder its agents, employees be restrained from collecting and or putting up for sale the applicant's goods pending the hearing of this application interpartes;*
  - iii. *That there be a stay of execution against the judgement and all orders in Nairobi Chief Magistrates case no. 7405 of 2006 and all consequential orders there from be granted pending hearing and determination of the intended appeal.*
2. The motion is supported by the affidavit of Caroline Margaret Wanjiru sworn on 21.8.2015. When served, **Agri Hardware (EA) Ltd and David Kamau, Gladys Njeri and Casement Industries Ltd** the respondents herein, filed grounds of opposition to oppose the motion. 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.
3. I have considered the rival submissions plus the material placed before this court. The applicant has argued that it could not file an appeal within the statutory period because the ruling it seeks to impugn was delivered on a date it had no notice. The applicant stated that it came to know of the delivery of the ruling when auctioneers visited its premises to attach its properties. The 1<sup>st</sup> respondent is of the view that the applicants application lacks merit in that the date for ruling was given by the court in the presence of the parties hence no notice was required to be given to the applicant. It is also argued that the condition for the grant of stay of execution pending appeal have not been met. The 1<sup>st</sup> respondent further argued that the prayer for injunction was not available since the applicant came by way of garnishee proceedings before the trial court.

4. I have considered the arguments presented by both sides by way of written submissions. It is apparent from the material placed before this court that the applicant herein filed the application dated 22.08.2014 before the trial court in which it sought for temporary orders of injunction. When the application came up for interpartes hearing the parties were ordered to file written submissions in respect of the application. The record shows that the applicant filed its submissions by 14.11.2014. The matter was fixed for mention on 18.11.2014, to confirm compliance of filing of submissions. Unfortunately the court did not sit on the aforesaid date hence the matter was stood over to 3.12.2014.
5. On 13.12.2014, it is shown that the court was proceeding on leave and since the parties had not filed their submissions the court directed parties to fix dates at the registry. The respondent eventually filed its submissions on 23.6.2015. On 24.6.2015, the respondent appeared exparte and was given a ruling date for 7.7.2015. There is no evidence that the respondent notified the applicant the date of ruling. Come 7.7.2015, the ruling was delivered to 8.7.2015 when it was eventually deferred in the absence of the applicant. It is clear to me that since the applicant was not informed of the ruling date it could not file an appeal within time. I am convinced that it is necessary to give the applicant leave to appeal. Consequently I grant it leave of 10 days to file an appeal out of time.
6. I am also satisfied that there is need to preserve the status quo pending appeal by granting an order for stay.
7. In the end the motion is allowed as proposed hereinabove. In the circumstances of this case I do not think it is necessary to order the applicant to provide security for the due performance of the decree. Costs of the motion to abide the outcome of the appeal.

**Dated, Signed and Delivered in open court this 11<sup>th</sup> day of March, 2016**

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Applicant

..... for the Respondent