

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

HIGH COURT CIVIL APPEAL NO. 11 OF 2016

GEOFFREY I. KARIUKI T/A DIRECT "O" AUCTIONEERS.....APPELLANT

VERSUS

KAREL SWINGS.....RESPONDENTS

RULING

1. The Applicant is an Auctioneer operating in Nakuru. In the course of executing warrants of attachment issued in Chief Magistrate's Civil Case No. 118 of 2014 Daniel Kipngotei Bwalei, he attached a motor vehicle registration No. KAN 330K claimed as the property of Total Touch Cargo Ltd. This action prompted the Managing Director of the said company to lodge a complaint with the Auctioneers Licensing Board.

2. The Board found against the Applicant and imposed a fine of Ksh.50, 000/= and ordered him to pay costs amounting to Ksh.30,000/= to the Complainant. The Applicant, aggrieved by the said decision filed an appeal on 17/3/16. He also filed an application expressed to be brought under Order 42 r 6 (1) and 6 (6) of the Civil Procedure Rules seeking stay of execution pending appeal. The main grounds are that his appeal, which has high chances of success will be rendered nugatory if the stay sought is not granted, as tracing the Respondent to recover any payment made out may be difficult. He says he has bought the application timeously.

3. The application was opposed through a Replying Affidavit of the Respondent. The Respondent views the application as an abuse of the court process and only intended to stall compliance with the Board's decision, thus denying the Respondent the fruits of the decision.

4. The Respondent avers that Total Touch Cargo Ltd is a registered company whose business location can be traced and is able to pay back any sums paid over to the applicant pursuant to the Board's decision. The arguments of the parties' advocates took cue from their respective filed material.

5. Having considered all the material canvassed before me, I take the view that the present application has no merit and must be rejected. For the following reasons. The applicant's assertions that he will suffer substantial loss have been effectively controverted by the Respondent demonstrating that the company Total Touch Cargo Ltd can be traced and is capable of repaying the sums arising from the Board's decision.

6. The said sum is in any event relatively minimal and it is reasonable to expect that a company which is a going concern can refund the same. The applicant has not offered any security for the performance of the decision in the event the appeal fails. I also note that the appeal herein was filed on 17/3/16 which is over 30 days since the dispatch of the decision of the Board and roughly 30 days since the letter communicating the Board decision was dispatched.

7. There is no evidence that the Board ordered a stay of its decision but it could be implied from the fact that the Applicant was given 30 days to comply with the decision of the Board. It is not clear to me whether the decision of the Board was given immediately after the hearing on 19/1/2016 on whether by the subsequent notice dated 29/1/16.

8. Therefore, I will give the applicant the benefit of doubt regarding the timeousness of his application. The application stands dismissed with costs, however, for the reasons stated.

C. MEOLI

JUDGE

Delivered and Signed this 20th day of May, 2016 in the presence of

M/s Gitau Holding brief for Mr. Terer For the Applicant

Non Appearance For the Respondent

Court Clerk Mr. Barasa