

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL APPEAL NO. 103 OF 2014

EQUITY BANK LIMITED (KISUMU BRANCH).....APPELLANT

VERSUS

CHEMELIL SUGAR COMPANY LIMITED.....1ST RESPONDENT

THYMA ENTERPRISES CO.2ND RESPONDENT

RULING

The appellant's notice of motion dated 23-9-2014 prays for the following orders:

- a. **Spent.**
- b. **That there be a stay of execution of the garnishee order absolute dated 9-8-2012 pending the hearing and determination of the intended appeal.**
- c. **That the attachment made on 13-8-2013 by Maywood Auctioneers be lifted and discharged altogether.**

The application is supported by the sworn affidavit of one Tom Kuyo, the applicant's Branch Manager. The applicant's complaint is in regard to a garnishee order granted in favour of the respondent by the lower court. That order demanded that the appellant do release a sum of Kshs. 1,88,230.10/= due to the respondent from an account held by the applicant on behalf of the judgment debtor. The applicant contend that the only amount held by the judgment debtor in its account No. 0290296531670, Kisumu branch is Kshs. 264,034.32/=.

The respondent has filed a replying affidavit sworn by one E.K. Ngala in which it has argued that the applicant has come to court with unclean hands literally. That what it ought to do is to comply with the court's orders just before seeking the stay from this court.

At this level this court is only enjoined to deal with the question whether or not the application for stay pending appeal should be granted. The other substantive issues raised by the applicant shall await the appeal process. The provision of order 42 Rule 6 of the Civil Procedure Rules are clear. This court shall only grant stay or refuse stay pending appeal for any sufficient cause provided that substantial loss shall be suffered if the same is not granted and that the application has been brought without undue delay. Equally, it must be granted discretionally and to prevent the intended appeal being rendered nugatory. This court may also grant it conditionally see **Justus Gatete Thomba -VS- Wells Fargo Limited 2012 eKLR.**

Upon perusing the pleadings and the submissions by the parties herein, I am satisfied that there is an arguable appeal on the part of the applicant and that there is need to allow the application otherwise the same shall be rendered nugatory.

In allowing the application I do order that the applicant shall release the sum of Kshs. 264,034 in the judgment debtor's account No. 0290296551670 Kisumu Branch to the respondent within the next 30 days from the delivery of the ruling. Let there be stay pending the determination of the appeal. Costs of the application to await the outcome of the appeal.

Dated, signed and delivered at Kisumu this 18th day of February, 2015.

H.K. CHEMITEI

JUDGE