



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 634 OF 2007

DR. FAITH MULI.....PLAINTIFF

VERSUS

DR. MOSES NJUE GACHOKA

carrying on business in the name of

KINGS MEDICAL COLLEGE.....DEFENDANT

RULING

1. Dr. Moses Njue Gachoka the Defendant herein took out the motion dated 8th June 2015 in which he sought for the

following orders:

- 1) ***THAT this application be certified as urgent and be heard ex parte in the first instance.***
- 2) ***THAT this Honourable court be pleased to order a stay of execution of the order of the Ruling of Justice J.K. Sergon dated the 15th day of May 2015 pending the hearing and determination of the Applicants' intended appeal vide the application dated 22nd May 2015.***
- 3) ***THAT in the alternative and without prejudice to prayer 2 above, this court be pleased to enlarge time within which to comply with the Ruling of Justice J. K. Sergon dated the 15th day of May 2016 to 16th September 2015.***
- 4) ***THAT the costs of and incidental to this application abide in the result of the said appeal.***

2. The Defendant filed an affidavit he swore to support the motion. Dr. Faith Muli, the Plaintiff herein filed a replying affidavit he swore to oppose the aforesaid 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 grounds set out on the face of the motion plus the facts deponed in the affidavits filed against and in support of the motion. I have further taken into account the rival written submissions.

4. Before considering the substance of the motion, let me set out in brief the background of this dispute. The Plaintiff sued the Defendant claiming damages for defamation. The suit was heard and in the end this court entered judgment in favour of the Plaintiff and against the Defendant in the sum of kshs.3,000,000 as general damages. The Defendant being dissatisfied with the aforesaid decision filed a notice of appeal to express his intention to challenge the decision in the court of Appeal.

5. The defendant successfully obtained before this court an order for stay of the decree pending appeal on condition he deposits a sum of kshs.1,000,000/= in court within 30 days. It would appear that the Defendant has been unable to comply with the order hence he is now before this court seeking for a stay of the order pending the hearing and determination of an application dated 22 May 2015 pending before the court of Appeal.

6. The Applicant has also sought for an alternative order for extension of time within which to comply with the order.

It is the Defendant's argument that it is unable to raise the sum of kshs.1,000,000/- and he has thus filed a notice of appeal. The court of appeal Rules permits the Applicant to file a similar application before the Court of Appeal. The Court of Appeal rules does not envisage a situation where a litigant files an appeal against an order of this court to refuse an application for stay. This is the more reason why the Defendant/ Applicant filed a similar application before the Court of Appeal. I think the Defendant/Applicant's conduct of filing a notice of appeal against a ruling on an application for stay of execution in my view amounts to an abuse of the court process. I consequently decline to grant the order.

7. The second limb of the Defendant's motion is for an extension of time by 30 days to enable him comply with the condition to deposit the sum of kshs. 1,000,000/=. The notice of motion dated 8th June 2015 and ninety days have since passed so that this prayer is already overtaken by events in that the thirty days requested have lapsed.

8. In the circumstances of this case, I think a fair order that commends itself is in favour of the dismissal of the motion since the same lacks merit. The same is dismissed with costs to the Plaintiff.

Dated and delivered in open court this 25th day of September, 2015.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

.....for the Defendant