



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.206 OF 2013

PAOLA TARLAZZI (*suing through his attorney and/or Agent*)

CARLA TARLAZZI.....PLAINTIFFS/RESPONDENT

=VERSUS=

ROBERTO CIAVOLELLA.....DEFENDANT/APPLICANT

R U L I N G

1. In the Application dated 27th April 2015, the Defendant is seeking for the following orders:

(a) That upon interpartes hearing this Honourable Court be pleased to issue an Order of stay of execution of its Order for entry of default Judgment against the Defendant/Applicant made on the 1st day of September 2014 pending Appeal.

(b) That this Honourable Court be pleased to issue or make such other orders as may appear to the court to be just and convenient.

(c) That costs of the application be in the cause.

2. The Application is premised on the grounds that the Defendant feels aggrieved by the Ruling of this court and intends to appeal to the Court of Appeal; that the Plaintiff has initiated execution process and that this court has the power to order for a stay of execution pending appeal.

3. The Plaintiff's advocate filed Grounds of Opposition in which he averred that the Plaintiff's Application is defective, misconceived, incompetent and bad in law; that the Application does not meet the requirements of Order 42 Rule 6(2) of the Civil Procedure Rules and that the Application is a calculated attempt to deny the decree holder the fruits of her Judgment.

4. In his brief submissions, the Defendant's counsel submitted that the Applicant has filed a Notice of Appeal; that he should be allowed to exhaust the avenues of appeal and that the Applicant will suffer loss if execution is allowed to proceed.

5. On the other hand, the Plaintiff's/Respondent's counsel submitted that the Applicant has not shown the substantial loss that she will suffer; that the Applicant has not provided any security; that sixty days have lapsed since the Notice of Appeal was filed and that the court has found twice that the Applicant does not have a good defence.

6. This court entered interlocutory Judgment in favour of the Plaintiff for Euros 130,000. The Defendant is seeking for a stay of execution of the Judgment pursuant to the provisions of Order 42 Rule 6(2) of the Civil Procedure Rules.

7. Order 42 Rule 6(2) of the Civil Procedure Rules provides that an order for stay of execution shall only be granted if the court is satisfied that sufficient loss may result to the Applicant unless the order is made and the application must have been made without unreasonable delay. The Applicant is also required to give security for the due performance of the order or decree.

8. The Applicant has not stated in his affidavit the substantial loss that he shall suffer if the order of stay of execution is not granted.

9. Indeed, the Applicant has not deponed at all in his Affidavit that he shall suffer any loss or that the Plaintiff/Respondent is a woman of straw and shall not be able to recover from her the decretal sum in the event the Court of Appeal decides the case in his favour.

10. The failure by the Applicant to satisfactorily show the substantial loss that he shall suffer if the order of stay is not granted renders the Application unmeritorious.

11. Considering that the Judgment that was entered by the Court is for Euros 130,000, the Defendant/Applicant should have provided security. The failure to provide security for the due performance of the orders of this court dis-entitles the Defendant from being granted an order of stay of execution.

12. For those reasons, I dismiss the Application dated 27th April 2015 with costs.

Dated and delivered in Malindi this **23rd** day of **October** 2015.

O. A. Angote

Judge