



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL APPEAL NO.90 OF 2015

STEPHEN GITAU KARANJA.....1ST APPELLANT

JUDY MWAURA2ND APPELLANT

VERSUS

TIMOTHY ODHIAMBO ODENDE.....RESPONDENT

RULING

1. The applicants herein pray for orders of stay of execution pending appeal in their application dated 3.11.2015. They argue in the application that the lower court erred in lifting the corporate veil and ordering them to pay the respondent.
2. Before arriving at a decision its better to set down the facts clearly. According to their supporting affidavit the applicants are the directors of a company called Eldodrill Holdings Limited which had been contracted by the respondent to drill a bore hole for him. He paid the applicants Kshs.662,500. However the work seemed not to have been done and he filed suit to claim the same. Summary judgment was entered against the said M/S Eldodrill Holdings Limited.
3. The said company filed appeal No.84 of 2014 which is yet to be heard. Apparently it made an application to lift the applicants corporate veil which application was allowed. The applicants being dissatisfied filed the appeal herein together with the current application for stay of execution.
4. At this juncture this court is not enjoined to determine the veracity of the appeal but to simply ascertain whether if the execution proceedings are allowed to proceed the applicants shall suffer substantial loss and consequently the appeal shall be rendered nugatory.
5. Having read the parties submissions together with the supporting documents I am satisfied that the application is meritorious and the appeal is plausible. My findings are premised on the fact that there is need to determine whether the lower court had competency to lift the corporate veil against the applicants. Secondly who actually paid the respondent Was it the applicants or the company.
6. These are some of the weighty issues that needs to be interrogated. Equally in light of this appeal, what of the pending appeal No. Kisumu HCCA 84/14. Is it possible that the respondent has applied two pronged assault to recover his debt?
7. Even then the respondent's grounds are strong. There is no doubt that he engaged either the company or the directors in particular the 1st applicant herein as can be deduced from the pleadings. Again this court is not legally permitted at this juncture to determine such broad issues. They shall be dealt with at the appeal level.

8. Should the applicants be ordered to deposit security of Kshs.1,000,000/= as prayed by the respondent? That prayer is normally granted by the court discretionarily . However I find that on the basis of the materials presented before this court, the applicants were not a party to the lower court's suit and therefore to order them deposit security would be onerous.

9. Consequently I shall allow this application dated 3.11.2015: namely that there be stay of execution of the decree in Kisumu PMCC No.249/12 as ordered on 23.10.2015 pending the hearing and determination of the appeal herein.

Costs of this application to await the outcome of the appeal.

Dated, signed and delivered this 16th day of December 2015

H. K. CHEMITEI

J U D G E

In the presence of:

.....**for applicants**

.....**for respondents**