

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL SUIT NO. 141 OF 2009

DAMISHA BUILDING CONTRACTORSPLAINTIFF

VERSUS

AUTO SPRINGS MANUFACTURERS LTDDEFENDANT

RULING

1. The application (**Notice of Motion**) dated **14th January, 2014** is brought pursuant to provisions of **Order 42 rule 6(1)** of the **Civil Procedure Rules, 2010** and all enabling provisions and procedure of the law. It seeks an order of stay of proceedings in the suit pending hearing and determination of an intended appeal from the ruling delivered by the Court on the **30th October, 2011**.
2. The application is based on grounds that the applicant being dissatisfied by the ruling of the court dismissing the Preliminary Objection raised dated **10th October 2012** intends to appeal against it and unless proceedings are stayed the appeal shall be rendered nugatory. The application is supported by an affidavit sworn by **Harshad Patel** the **Chairman** of the Applicant Company who stated that the respondent would not suffer any prejudice if the application sought is granted.
3. The application was served upon the respondent's advocate who failed and/or refused to respond thereto.
4. To grant such an order, the applicant must demonstrate that the application was made without unreasonable delay and substantial loss will result if the order is not granted.
5. The ruling having been delivered on the **30th October, 2013** and this application having been filed 2 ½ months later it cannot be said that the delay was inordinate. It has been stated that if the order sought is not granted the applicant will be condemned to pay damages on issues that had been determined.
6. The applicants have filed a Notice of Appeal which is evidence that they are desirous of instituting the appeal against the order. In the premises, the proceedings in the suit shall be stayed pending hearing and determination of the intended appeal on condition that the appeal is filed within **three (3) months** from the date hereof. In default the case shall be set down for hearing.
7. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 3RD day of APRIL 2014

L.N. MUTENDE

JUDGE