

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL APPEAL NO. 163 OF 2012

HEADS U WIN SALON.....APPELLANT

VERSUS

RAM DEVELOPMENT LTD.....RESPONDENT

RULING

Before court is the notice of motion application dated 16th September, 2013 in which the applicant seeks *inter alia* orders as follows:

“2. THAT the court review its orders on the amount of security from Kshs. 300,000/= to a reasonable figure.

3. THAT pending the hearing of this application there be a stay of execution of the ruling delivered on the 23rd August, 2013.”

The application was supported by the affidavit of the applicant **NAOMI WARUI** dated 16th September, 2013. The application was opposed by way of the replying affidavit of **KUNJ GUPTA** dated 26th September, 2013. On 17th September, 2013 the court granted a temporary stay of execution pending the determination of this present application. The application arose from the ruling of the court delivered on 23rd August, 2013. In that ruling the court granted a stay of the judgment delivered on 21st August, 2012 **subject** to the applicant depositing the sum of Kshs. 300,000/= as security within 21 days.

I have carefully perused the submissions filed by both parties. The respondent submits that the entire application is incurably defective on grounds that the orders sought to be reviewed were not annexed to the application. However I do agree with counsel for the applicant that there cannot be said to be any mystery and/or any confusion regarding the orders sought to be reviewed as the same forms part of the court record. I am guided by section 159(2) (d) of the Constitution of Kenya which exhorts courts to administer justice **without undue regard to technicalities**. I therefore find that the present application is not incurably defective.

The applicant submits that she is not able to raise the court ordered security of Kshs. 300,000/= due to the state of her business at the current time. She requests that the court do review this amount downwards to Kshs. 100,000/=. Taking into account all relevant factors, I am satisfied that the present application is merited and I hereby review my earlier orders. I direct that the applicant do pay a security of Kshs. 200,000/= within a period of thirty (30) days from today’s date failing which the stay orders in force will automatically lapse. The appeal to be prosecuted within ninety (90) days (subject to the availability of court dates). Each party to meet its own costs for this application.

Dated and delivered in Mombasa this 28th day of May, 2014.

M. ODERO

JUDGE

In the presence of:

No appearance by either party