



REPUBLIC OF KENYA

High Court at Nakuru

Miscellaneous Civil Case 266 of 2011

**PAUL K. OLE YIARE
t/a NASIOKI AUCITONEERS.....RESPONDENT**

VERSUS

EQUITY BANK LIMITED.....APPELLANT/APPLICANT

RULING

By the Notice of Motion dated 29/4/2013, the appellant/applicant, Equity Bank, sought an order that the proceedings arising from the ruling of Hon. Mwaniki, Senior Resident Magistrate, on 26/2/2013, be stayed pending hearing and determination of the applicant's appeal against the said ruling. The application was supported by an affidavit of Leaky Wanjau, the Credit Legal Services Manager of the applicant.

The application was opposed and grounds of opposition were filed by Musembi Ndolo Advocate for the respondent and a replying affidavit was sworn by Paul Kiranto Ole Yiale.

When the matter came up for hearing on 15/5/2013, Mr. Musembi Ndolo informed the court that he had no objection to the order of stay being granted on condition that the applicant provides security as the applicant had intimated that it was ready to abide by any order as to security that the court would deem fit to grant. Mr. Musembi urged the court to order that the assessed costs to the tune of Kshs.11,034,817/- be deposited in a joint account in the names of both counsel in a financial institution till the matter is heard and determined. Mr. Anam, counsel for the respondent urged that the respondent is willing to offer reasonable security but not the full assessed costs as the sum is colossal. Counsel also urged that they are appealing against the assessed costs and he suggested that the court do order a sum of Kshs.4 million be deposited as security.

The only outstanding issue is how much security should the applicant avail. The applicant has challenged the taxing of the costs for reasons that there was inter alia, a pending application for arbitration; that the costs are manifestly high in the circumstances; that the input of the applicant was not allowed. A sum of Kshs.11,000,000/- is colossal indeed. In my view, since the taxed costs are challenged, if the court were to make an order that the full sum be deposited as security, it would be tantamount to the court denying the applicant an order of stay. The court should do its best to balance the interests of both the parties, so that apart from the fact that the respondent should not be denied the enjoyment of the fruits of his judgment, yet the applicant should also be allowed to exercise its right of appeal. Consequently, in exercise of this court's discretion, I grant an order of stay of execution in terms of prayer 4 of the Notice of Motion on condition that the applicant do provide security of a sum of Kshs.5,000,000/- to be deposited in a joint account of both counsel for the applicant and respondent in a sound financial institution pending the hearing and determination of this appeal. The deposit be made within 21 days hereof, in default the order of stay do lapse automatically.

Costs be in the cause.

DATED and DELIVERED this 24th day of May, 2013.

R.P.V. WENDOH
JUDGE

PRESENT:

.....for the respondent

.....for the appellant/applicant

Kennedy – Court Clerk