



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

CIVIL APPEAL 113 OF 2009

MARATHON (K) LIMITED.....APPELLANT

VERSUS

PAUL OBAGA MINYANDA.....RESPONDENT

R U L I N G

1. Marathon (K) Limited (hereinafter referred to as the applicant), has come to this court by a way of notice of motion dated 10th March, 2009, seeking an order for stay of execution pending the hearing of his appeal against the judgment of the Senior Principal Magistrate delivered on 10th January, 2009 in Milimani CMCC No.7928 of 2005.
2. An issue has arisen as to whether there is any appeal which has been filed by the applicant. This is because Paul Obaga Minyanda, who is the respondent, maintains that the applicant's notice of motion was filed before the applicant's memorandum of appeal.
3. Having considered this application and the record of this court, I find it clear that both the notice of motion and the memorandum of appeal were filed on 10th March, 2009. This is evident from the court stamp on the face of the two documents which indicates 10th March, 2009 as the date when both documents were received. This fact is further confirmed by the receipt No.2340926 dated 10th March, 2009 for payment of Kshs.2,880/= in respect of the memorandum of appeal and the application.
4. The confusion appears to have arisen from the indication given by the Deputy Registrar showing the date of 13th March, 2009 as the date when the appeal was lodged in the registry. Upon seeking a clarification from the Deputy Registrar, The Deputy Registrar has conceded that the date of 13th March, 2009 was an error on his part as the date ought to have been 10th March, 2009.
5. With regard to the application for stay of execution pending appeal, I note that the decree is for a sum of Kshs.600,000/= in respect of general damages and Kshs.311,075/= in respect of special damages plus costs of the suit. Given that the respondent is an individual who was working as a driver and is currently unemployed, the decretal sum is a colossal amount. Although the respondent has contended that he is engaged in private business and farming, it would appear that such business is only sufficient to sustain his family and the fear that the respondent may have difficulties if the decretal sum is paid to him in restituting the amount, should the applicant be successful in his appeal, is not unfounded.
6. For the above reasons, I will grant an order of stay of execution pending appeal on the following conditions:

(i) That the decretal sum of Kshs.911,075/= which was deposited in court by the applicant on the 17th March, 2009, shall be released to the parties' advocates to be deposited into an interest earning account in the joint names of the parties' advocates, within 10 days from the date of release.

(ii) The applicant shall file and serve a record of appeal within 90 days from the date hereof.

(iii) The applicant shall take all necessary action to facilitate the speedy disposal of this appeal. In the event that the appeal is not disposed off within 12 months from the date hereof, the order for stay of execution pending appeal shall stand discharged unless otherwise extended by the court.

(iv) Costs of this application shall be costs in the appeal.

Orders accordingly.

Dated and delivered this 11th day of June, 2009

H. M. OKWENGU

JUDGE

In the presence of: -

Advocate for the applicant absent

Nyaribo for the respondent