

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Civil Appeal 56 of 2009

MALINDI MANAGEMENT STRATEGY LIMITED.....APPELLANT

VERSUS

MAJENGO LAUNDRY CORNERRESPONDENT

R U L I N G

This is an application by the Appellant for an order of Stay of execution of all orders emanating from the Ruling on 20th March 2009 in Mombasa Civil suit Number 1235 of 1995 pending the hearing and determination of the appeal herein or further orders of the court.

Judgment was delivered in favour of the Respondent. I am told that the decretal sum is Shs.244,597/- The Appellant applied for review of the judgment. The application was dismissed hence this appeal.

At the ex parte hearing of this application, the Court at the Appellant's instance or offer made on order that Shs.75,000/- be deposited in court as condition for the ex parte order of stay pending inter partes hearing.

I do not agree with the Applicant/Appellant that the said deposit was a term of stay of execution pending appeal. The record shows that it was a condition for grant of the ex parte order of stay of execution pending inter partes hearing.

As a result, this court will hear the application on its merits. The Appellant contends that if the stay is not grants the appeal herein which stands high chances of success may be rendered nugatory and will suffer grave injustice.

The Appellant states in paragraph 10 of the affidavit in support that it is ready and willing to deposit the decretal amount in court pending the outcome of this appeal and abide by any orders of the court may give as a sign of good faith.

In response the Respondent proposes that the Appellant deposits the sum of Shs.244,597/- being the decretal sum and not shs.75,000/- which was the original principal sum on the claim.

To ensure that there is strict compliance with the provisions of Order XLI Rule 4(2) of the Civil Procedure Rules as regard the giving of security by an Applicant for the due performance of the decree and in view of the offer by the Appellant, it is only fair and just that the entire sum is fully secured.

I do hereby grant prayer 2 of the application on condition that the entire decretal sum is deposited in court. The decretal sum is Shs.244,597/- out of which the Appellant has deposited a sum of Kshs.75,000/- . It shall therefore deposit into court the balance or difference in the sum of Kshs.169,597/- within the next 30 days from today. In default the Respondent shall be at liberty to execute the decree. The Appellant shall pay the costs of the application.

Dated and delivered at Mombasa this 28th day of September 2009.

M. K. IBRAHIM

J U D G E