



Taj Mall Limited v Cobra Security Company Limited (Miscellaneous Case 117 of 2019) [2024] KEHC 14426 (KLR) (Civ) (21 November 2024) (Ruling)

Neutral citation: [2024] KEHC 14426 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CASE 117 OF 2019
LP KASSAN, J
NOVEMBER 21, 2024**

BETWEEN

TAJ MALL LIMITED APPELLANT

AND

COBRA SECURITY COMPANY LIMITED RESPONDENT

RULING

1. This is a notice of Motion dated 7th August 2024 seeking orders that the firm of waruhiu Kowade and Thiga Advocates execute all documents to transfer the funds held in Account no 067321001 and the related certificate of fixed deposit receipt customer no 000673212 to the Firm of DK Githinji Absa bank mainly because the Appeal was heard and determined in favour of the Applicant. This Application is opposed mainly on the reason that the Respondent herein has filed an Appeal to the Court of Appeal. I have read the relevant documents and wish to note the following;
 1. The Right of appeal to the Court of Appeal.
This is a constitutional right which is inalienable. For now, the matter is at the Court of Appeal.
 2. Whether the right to the Court of Appeal can deny a litigant to enjoy the fruits of his/ her Judgement. The right to enjoy fruits of Judgement is key in any litigation. Courts must satisfy itself that a winning litigant should be able to reimburse the decretal amount in case he loses the Appeal. This satisfaction can only be met if the Respondent (as in the case) can prove that he will suffer prejudice if he wins the Appeal as the Applicant (in case the security is released) would not be able to refund. I have read the Replying affidavit and noted that this fear has not been expressed.
 3. Lower Court Case/ Judgement



This Suit was filed in 2014 and Judgement delivered in 2018. The suit in celebrating the first tenth anniversary next month and its judgement nearing six years old. These are lengthy periods of time and although the journey to the Court of Appeal or even beyond has started with a little hiccup (rejection of an application to extend time to appeal), the main issue here is the security.

4. Who will be prejudiced?

At Paragraph 8 of the Replying affidavit, the Respondent avers

“Release of the funds before the outcome of the Appellate proceedings will prejudice the Respondent whose rights to be heard are enshrined in Article 50 of the [constitution](#)”

I have read article 50 of the [constitution](#) and have not seen how release of such moneys can stall enjoyment of Article 50. I do not think that these moneys form part of evidence or process at the Court of Appeal. To this extent and given the reasoning in no 3 above, I see no prejudice that could possibly be suffered by the Respondent if these moneys are released. To the contrary, the Applicant herein will suffer prejudice because the wait to enjoy his fruits of judgement granted by the lower court and affirmed by the high court will be elongated.

2. The upshot of the above is that the Application has merit and is allowed. Each party shall bear own costs.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 21ST DAY OF NOVEMBER 2024.

L. KASSAN

JUDGE

In the presence of:

Githinji for Applicant

Thiga for Respondent

Carol – Court Assistant

