

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 354 OF 2019

TULSI CONSTRUCTION COMPANY LIMITED.....APPELLANT

VERSUS

KENYA AIRPORTS PARKING

SERVICES LIMITED.....RESPONDENT

RULING

There is before me an application dated 13th October, 2020 seeking an order to have counsel come on record, stay of execution pending the determination of the application and that the applicant be allowed to pay the decretal sum by monthly instalments set out therein.

The application is under Article 50 (1) and 25 (c) of the Constitution, Sections 3A and 1A of the Civil Procedure Act, Order 42 rule 32 and Order 51 of the Civil Procedure Rules.

Grounds have been set out on the face of the application together with a supporting affidavit. The application is opposed and there is a replying affidavit sworn in that respect. I have also the submissions of the parties which I have considered alongside some authorities.

This is not the first time the applicant has moved the court in respect of the same matter. After the lower court ruling delivered on 28th May 2019, the appellant made an application for stay of execution and leave to pay the decretal sum by instalments. That application was dismissed on 30th April 2020. The appellant did not appeal that decision.

The appellant then moved to the High Court and filed the application dated 24th June 2019 seeking a stay of execution of the lower court ruling. That application was dismissed in the ruling dated 27th November, 2019.

In the present application, prayer d) is more or less the same as the one sought in the lower court and dismissed. Having failed to appeal the lower court ruling, it is not open to the appellant to seek the same orders in this application. I find the matter is *res judicata* and Section 7 of the Civil Procedure Act solidifies that position. To hold otherwise will amount to abuse of the court process. The end result is that this application is dismissed with costs to the respondent.

Dated, signed and delivered at Nairobi this 11th day of February, 2021.

A. MBOGHOLI MSAGHA

JUDGE