



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIVASHA

CORAM: R. MWONGO, J.

CIVIL APPEAL NO. 60 OF 2019

FAMILY BANK LIMITED.....APPELLANT/RESPONDENT

-VERSUS-

PANDA CO-OPERATIVE SAVINGS

CREDIT SOCIETY LIMITED.....RESPONDENT/APPLICANT

(Being an appeal from the Judgment and Decree of the of the CM'S Court Naivasha

in Civil Case No. 496 of 2017 dated 22nd October, 2019, E. Kimilu - PM)

RULING

1. The Applicant's application dated 6th January, 2021 seeks that this court do discharge this its interim orders staying execution on 9th December, 2019.
2. The stay orders of 9th December, 2019 were extended on 10th February, 2020 to the date of hearing the appeal. The extension of stay was granted upon confirmation by the parties that the appellant had deposited the decretal sum in court as security. This court then gave the Appellant 60 days within which to file the appeal from 10th February, 2020. The appeal was therefore due to have been filed on or before 10th April, 2020.
3. The Record of Appeal was in fact filed on 25th August, 2019. The Appellant did not take any other steps to pursue the appeal. In their replying affidavit of Philip Mburu, they blame the delay on the Covid 19 pandemic and its disruption of the business of the court. However, they have not attached any documentary evidence to show any attempts made to comply with the court's orders, or any communication with the court since filing the Record of Appeal on 25th August, 2019.
4. It is argued by the appellant that the slight delay in filing the record of appeal was occasioned by factors beyond their control. As such, they submit that the stay orders should remain in force.
5. The appellant orally argued that the amount deposited in court did not cover the full judgment debt of Shs 3,698,043.16 as the amount deposited was Shs 2,310,284.20. There is however no documentation that shows that the judgment debt was Kshs 3,698,043.16.
6. The parties did not file any authorities in support of their representations. Ultimately, the issue is whether or not this court should lift the stay orders due to the failure of the Appellant to comply with the order to file the appeal record within 60 days. This is a matter of discretion for the court.
7. The court will take judicial notice that the corona virus pandemic and government directives in respect thereof were effected by the Judiciary commencing on 15th March, 2021. The courts were affected by virtue of closure and inter-county movements restrictions thereafter.
8. Whilst the restrictions occurred throughout most of 2020, there was a slow trickle of court activity and directions were issued with respect to non-physical filing of documents. This digital filing was publicized broadly. There is no evidence that the Appellant took any steps consequent thereto.

9. The Respondent herein is secured by the deposit in court of the decretal sum, and I do not see any reason to penalize them for failing to strictly comply with the dates for filing the appeal. What I find disconcerting is that, after filing the appeal, they only served the same on the Respondent on 8th February, 2021, five and a half months later. This was even after Respondent in the appeal had filed the present motion on 13th January 2021. As such, this was an unnecessary delay which has not been explained.

10. I think the appropriate manner to deal with the delays by the Appellant is not to lift the stay orders, for then, execution proceedings will commence and the subject matter of the stay will be jeopardised.

11. It is, I think, more appropriate and in line with the ends of justice to order, as I hereby do, that the Appellant shall pay interest at court rates on the amount deposited in court from the date of filing the Record of Appeal until the date of this ruling.

12. Additionally, this is a proper case in which the Appellant should bear the costs of the application in any event, and I so order.

13. The appellant shall move the court as appropriate.

Administrative directions

14. Due to the current inhibitions on movement nationally, and in keeping with social distancing requirements decreed by the state due to the Corona-virus pandemic, this Judgment has been rendered through Teams tele-conference with the consent of the parties noted hereunder, who were also able to participate in the conference. Accordingly, a signed copy of this judgment shall be scanned and availed to the parties and relevant authorities as evidence of the delivery thereof, with the High Court seal duly affixed thereon by the Executive Officer, Naivasha.

15. A printout of the parties' written consent to the delivery of this judgment shall be retained as part of the record of the Court.

16. Orders accordingly.

Dated and Delivered in Naivasha by teleconference this 12th Day of May, 2021.

R. MWONGO

JUDGE

Attendance list at video/teleconference:

1. Mburu for the Appellant
2. Ms Muthoni holding brief for Maina for the Respondent
3. Court Assistant - Quinter Ogutu