



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. E341 OF 2020

JOSEPH KOECH.....APPELLANT/APPLICANT

-VERSUS-

STEEL STRUCTURES LIMITED.....RESPONDENT

RULING

1. The appellant/applicant herein has taken out the Notice of Motion dated 3rd December, 2020 and sought an order for leave to lodge an appeal out of time against the ruling delivered on 18th November, 2020 in Milimani CMCC NO. 4692 of 2018; and a further order for a stay of execution of the judgment delivered on 29th May, 2020 in the above case, pending the hearing and determination of the appeal.
2. The Motion is supported by the grounds set out on its face and the facts stated in the affidavit of the applicant.
3. In opposing the said Motion, the respondent put in Grounds of Opposition dated 18th January, 2021 and also filed the replying affidavit sworn by its Divisional Director-Human Resource and Administration, F.K. Njenga.
4. When the Motion came up for *inter partes* hearing before this court, it was agreed by the parties that they would rely on their affidavit evidence.
5. I have considered the grounds set out on the face of the Motion, the facts deponed in the affidavits supporting and opposing the Motion, and the Grounds of Opposition.
6. Before I delve into the merits of the Motion, however, I wish to address a necessary issue that I observed upon my perusal of the record.
7. Following delivery of the judgment by the trial court on 29th May, 2020 the applicant filed an application before the trial court and sought leave to file an appeal out of time against the aforesaid judgment and for a stay of execution of the judgment pending the hearing and determination of the appeal.
8. Upon hearing the application, the trial court dismissed it with costs vide the ruling delivered on 18th November, 2020.
9. Going by the orders sought in the instant Motion and the draft memorandum of appeal annexed thereto, it is evident the intended appeal lies against the ruling of 18th November, 2020 and yet the applicant is now seeking orders similar to those previously sought before the trial court, and which will essentially determine the issues which are the subject of the intended appeal.
10. Moreover, in the absence of a copy of the judgment delivered by the trial court in the suit, this court is not in a position to determine the issue on whether the applicant has an arguable appeal even in respect to the judgment.
11. For all the foregoing reasons therefore, I find that the intended appeal challenging the ruling delivered on 18th November, 2020 would serve no useful purpose in the face of the instant Motion.
12. Consequently, the Motion dated 3rd December, 2020 is hereby struck out for being incompetent, with no order on costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF MAY, 2021.

A. MBOGHOLI MSAGHA

JUDGE

In the presence of:

Ms. Wanjiku holding brief for Mr. Gachie for the Appellant/Applicant

Mr. Anyoka for the Respondent