



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL APPEAL CASE NO. 204 OF 2020

VINCENT H. LAWRENCE OPANGA.....1ST APPELLANT/APPLICANT

JAMES MARIENGA.....2ND APPELLANT

VERSUS

PLACID VIEW PROPERTIES LIMITED.....RESPONDENT

RULING

1. The application dated 2/6/2020 principally seeks orders that :-

The Court be pleased to grant a stay of the ruling delivered on 29th May 2020 in Nairobi CMCC 1483 of 2019 and/or any action pending hearing and determination of the Appeal.

2. Secondly, that:-

The Court be pleased to grant a stay of proceedings and/or further proceedings in Nairobi CMCC 1483 of 2019 and/or any further action pending hearing and determination of the appeal against the Ruling made by the Hon. D. O. Mbeja, SRM on the 29th of May 2019.

3. The application is premised on the grounds set out in the application and the supporting affidavit. It is stated that the ruling of the Lower Court was delivered on 29/5/2018. That the Lower Court held that the *ex parte* judgment was obtained regularly and the Applicant herein was ordered to deposit the decretal sum and to settle the auctioneer's fees. The Applicant contests service of summons.

4. It is further deposed that in the circumstances, depositing the decretal sum would be prejudicial to the Applicant. It is argued that the Appeal herein has reasonable chances of success.

5. The application is opposed. It is averred in the replying affidavit that the Applicant was served with Summons to Enter Appearance and the *ex parte* judgment was obtained regularly. That the order made by the Trial court is for the deposit of the decretal sum in court and not to the Respondent and therefore the Applicant has not demonstrated the loss that he stands to suffer. That the Applicant has not met the conditions for stay of proceedings and that the application is meant to delay the Respondent's Insurer from enjoying the fruits of the Judgment as the Insurance Company has already repaired the Respondent's motor vehicle that was damaged in the accident.

6. I have considered the application, the reply to the same and the rival submissions filed herein.

7. The well settled principles guiding the grant of a stay of execution pending appeal are provided under Order 42 rule 6(2) of the *Civil Procedure Rules* which provides as follows:

No order for stay of execution shall be made under subrule (1) unless—

(a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has

been given by the applicant.

8. The application at hand was filed on 4/6/2020. The ruling of the subject of the Appeal was delivered on 29/5/2020. There was no unreasonable delay.
9. The Applicant is aggrieved with the orders for the deposit of the entire decretal sum. However, the Applicant has not demonstrated that he will suffer any substantial loss if he complies with the condition to deposit the same. The Applicant has not offered any security for the due performance of the decree.
10. The Applicant referred the court to the case of **Global Tours & Travels Limited; Nairobi HC Winding up Cause No. 43 of 2000** where the Court stated: –

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice....the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously”.

11. In **Halsbury’s Law of England, 4th Edition.4th Edition. Vol. 37 page 330 and 332**, it is stated that:

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court’s general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt ought not to be allowed to continue.”

“This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases.”

“It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The Applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case.”

12. (See also **Benson Khwatenge Wafula V. Director of Public Prosecutions; Ethics and Anti-Corruption & 2 others (Interested Parties) (2020) eKLR**)

13. The court has the discretion to grant the orders of stay of proceedings. The discretion must however be exercised judiciously. In the case at hand, although the Record of Appeal has been filed, the hearing of the Appeal will take an indeterminate period. In the meantime, the hearing of the case before the trial court will be delayed. No prejudice that the Applicant will suffer if the application herein is not allowed has been demonstrated whereas the Respondent stands to be denied access to the expeditious hearing of his case. It’s not been demonstrated that the Respondent’s case is frivolous or groundless.

14. With the foregoing, I find no merits in the application. The same is dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17TH DAY OF JUNE, 2021

B.THURANIRA JADEN

JUDGE