



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL APPEAL NO. 122 OF 2021

KENYA POWER AND LIGHTING COMPANY....APPELLANT/APPLICANT

VERSUS

JULIUS KIRIMI.....RESPONDENT

RULING

1. Before the Court is an application dated 7th September 2021 seeking stay of execution of the Judgment delivered on 3rd August 2021 in Tigania PMCC No. E043 of 2020.

Applicant's Case

2. The application is premised on the grounds that the Applicant's appeal has a high likelihood of success and that the stay of execution granted by the lower Court has lapsed and that the Respondent may commence execution thus rendering the appeal nugatory. The Applicant urges that the substratum of the intended appeal is a sum of Ksh 3,000,000/= which if at the Respondent's disposal can be highly wasted or easily spent. The Applicant urges that it is ready, willing and able to deposit an insurable bond or a bank guarantee as security for the due performance of any resultant decree at the conclusion of the appeal. They urge that the Respondent will not be prejudiced if stay is granted and that the appeal has been filed timeously and in utmost good faith.

Respondent's Case

3. The application is opposed by the Respondent's replying affidavit sworn on 17th September 2021. The Respondent urges that he suffered 49 ½% burns on his body and he is still undergoing physiotherapy. That he was rendered economically unstable as he is unable to work yet he is the sole breadwinner. That the issue of liability is not contested. That the Ksh 3,000,000/= awarded to him is in fact minimal and not commensurate to the injuries he suffered.

Determination

Stay of Execution

4. An applicant seeking for stay of execution is required under Order 42 Rule 6 of the Civil Procedure Code to demonstrate that he is likely to suffer substantial loss should stay not be granted; that he is ready and willing to offer security for payment of any sums that may be found due to the other party after the appeal, and that he has come to Court without unreasonable delay.

5. The Applicant urges that the substratum of the appeal is Ksh 3,000,000/= which if paid to the Respondent is likely to be wasted. The Applicant has not expressed fears that the Respondent may be unable to pay the decretal sum should the appeal be successful. It is merely urged that the money may be spent or wasted which is not the same point as urging inability of the Respondent to refund the money. In money decrees, substantial loss is demonstrated by the inability of the Respondent to repay the decretal sum should the appeal be successful. As the Applicant has not expressed any such fears, there is therefore no need to require the Respondent to confirm his financial capability to pay. This Court finds that the Applicant has not adequately demonstrated the likelihood of suffering substantial loss if stay is not granted.

6. The Applicant indicated willingness to deposit an insurable bond or bank guarantee as security. The Respondent however opposed this prayer and urges that he is suffering and is in need of the monies. This Court considers that to balance the interests of parties, it is only fair that some amount is paid to the Respondent. Going by the grounds of appeal as set out in the Applicant's memorandum of appeal, the appeal herein is only on quantum. The Court thus considers that the Applicant will inevitably have to pay the Respondent some amount of money. The Court has also considered that the Applicant is a renown statutory body that provides electricity services nationwide and its financial capability is thus not in question. In the circumstances, the Court finds that a Bank Guarantee for the balance of the decretal sum would suffice as adequate security, once the Applicant pays the Respondent the amount that the Court will order hereunder.

7. With respect to delay, the Court observes that Judgment sought to be appealed was delivered on 3rd August 2021 and the instant application was filed on 7th September 2021. This was about 1 month later. This period cannot be said to be unreasonable delay.

ORDERS

8. Accordingly, for the reasons set out above, this Court makes the following orders: -

i) The court grants an order for stay of execution of the Judgement and Decree delivered on 3rd August 2021 in Tigania PMCC No. E043 of 2020 pending the hearing and determination of the appeal.

ii) The Applicant shall within Thirty (30) days pay to the Respondent the sum of Ksh 1,000,000/= being approximately a third of the decretal sum.

iii) The Applicant shall within Thirty (30) days deposit with the Court a Bank Guarantee for the payment of the balance of Ksh 2,105,000/= as may be adjudged upon it upon unsuccessful appeal.

iv) In default of the payment and deposit as per orders ii) and iii) above, the stay of execution herein granted shall lapse and be of no effect.

v) The costs of this application shall abide the outcome of the appeal.

Order accordingly

DATED AND DELIVERED ON THIS 14TH DAY OF OCTOBER, 2021.

EDWARD M. MURIITHI

JUDGE

Appearances

M/S Wambugu & Muriuki Advocates for the Applicant

M/S Mutembei & Kimathi Advocates for the Respondent