



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**HIGH COURT CIVIL APPEAL NO. 473 OF 2019**

**BUYIMPEX AGENCIES LIMITED.....APPLICANT**

**VERSUS**

**CROWN HEALTH CARE LIMITED.....RESPONDENT**

**RULING**

1. The application dated 14<sup>th</sup> August, 2019 seeks orders **there be an order of temporary stay of execution of the Ruling of the Senior Principal Magistrate Hon. A. M. Obura (Mrs.) delivered on 26<sup>th</sup> July, 2019 in Nairobi (Milimani Commercial Court) CMCC No. 7456 of 2015 pending the hearing and determination of this Appeal.**

2. It is stated in the grounds and the affidavit in support of the application that on 15<sup>th</sup> September, 2016 judgment on admission was entered by the lower court against the Applicant for the sum of Ksh.3,831,907.67. That the issue of interest and the disputed sum of Ksh.123,400/= was to proceed to a full trial. The Applicant is aggrieved by a revisit of the matter by the trial court three years later wherein interest at court rates with effect from 8<sup>th</sup> August, 2013 till payment in full was awarded for the admitted sum of Ksh.3,831,907.67. It is contended that the Appeal herein is arguable and that the same will be rendered nugatory if the application at hand is not allowed.

3. In the replying affidavit filed in opposition to the application, it is conceded that judgment on admission was entered for the sum of Ksh.3,831,907/= and the disputed sum of Ksh.123,400/= and the issue of interest was to proceed to a full trial. It is further stated that the Applicant herein filed HCCA No. 65/17 wherein by consent the parties agreed that the sum of Ksh. 3,831,167/= be liquidated by monthly installments and that the issue of interest payable be canvassed in the lower court. That the Respondent had waived the issue of the disputed Ksh.123,400/=. That the question of the interest payable was thereafter canvassed before the lower court and the Respondent herein awarded interest on the principal sum which came to Ksh.2,785,249/= and the costs of the suit which came to Ksh.279,352/=. The Respondent urged the court to have the said sums of money deposited in court or in an interest earning joint bank account of the advocates for the parties pending the hearing and determination of the Appeal.

4. I have considered the application, the response to the same and the submissions by counsel for the respective parties.

5. Under Order 42 rule 6 (2) of the Civil Procedure Rules, 2010 the conditions for stay of execution are as follows:

**“No order for stay of execution shall be made under sub-rule (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.”**

6. The application at hand was filed on 15<sup>th</sup> August, 2019. The ruling the subject matter of the appeal herein was delivered on 26<sup>th</sup> July, 2019. There was no unreasonable delay.

7. On substantial loss, there are no assertions made in the affidavit in support that the Respondent is not capable of refunding the amount in question. The Respondent is however not objected to the deposit of the decretal sum if the court finds that the application is arguable.

8. To balance the competing interest of the parties, I allow the application on condition that the decretal sum, that is Ksh.3,064,599/= (Ksh.2,785,247/= plus Ksh.279,352/=) is deposited in a joint interest earning Bank account of the respective counsel for the parties herein or in court within 30 days from the date hereof. Costs in cause.

**Dated, signed and delivered at Nairobi this 12<sup>th</sup> day of Feb., 2020**

**B.THURANIRA JADEN**

**JUDGE**