



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**COMMERCIAL & TAX DIVISION**

**HCCC NO. 330 OF 2009**

**STEGMA ENTERPRISES LIMITED ..... PLAINTIFF**

**-VERSUS-**

**VIKTAR MAINA NGUNJIRI ..... DEFENDANT**

**RULING**

1. Brought under Order 42 Rule (1) and 2 of the Civil Procedure Rules is an application for stay of execution of a money Judgment of this Court of 28<sup>th</sup> April 2020 for Kshs.4,561,174.00 with interest at Court rates from the date of filing of suit until payment in full. The order is sought pending the hearing and determination of an intended Appeal therefrom.
2. There is no dispute that a Notice of Appeal dated 12<sup>th</sup> May 2020 has been lodged by the Defendant.
3. This Court's Judgment was handed down on 28<sup>th</sup> April 2020 and this application was filed on 15<sup>th</sup> May 2020. There is no undue delay and one condition for grant of an order of stay under Order 42 Rule 6(1) and 2 of the Civil Procedure Rules has been met.
4. The Defendant is apprehensive of substantial loss if stay is not granted as he alleges that the Plaintiff ceased business in 2009 and has not been in operation since. He depones that he is not aware of any assets of the Plaintiff.
5. How does the Plaintiff's company respond? One its Director Stephen Matheka does not state the means or assets of the company and in fact concedes to impecuniosity as follows:-  
  
"That it is true that the Defendant's actions destroyed my business, my livelihood and rendered me impecunious when he forcefully evicted me, without any just cause whatsoever, from his premises on two occasions on the 21<sup>st</sup> March 2009 (upon which the Business Tribunal directed him to allow us back into those premises) and later on the 4<sup>th</sup> April 2009."
6. Within this admission, the Defendant's apprehension of substantial risk if stay is not granted is real.
7. Yet as an alternative position, the Plaintiff pleads that should stay be granted, then half of the decretal amount be paid to it to cushion it from the harm suffered as a result of the Defendant's unlawful action.
8. This Court is not unsympathetic to the plight of the Plaintiff, yet there is no knowing about the outcome of the Appeal. The Court of Appeal may find this Court in error and reverse its decision. At this stage, this Court will be concerned that any sums paid to the Plaintiff should ultimately be paid back if so ordered by the Court of Appeal. The Plaintiff has not demonstrated that ability and I think a stay order is deserved.
9. As to the security, the Defendant's counsel urges that the Court should not make a punitive order taking into account the current Covid 19 pandemic and its effect on business. I have heard the plea by the Defendant.
10. I therefore grant stay of execution of this Court's Judgment of 28<sup>th</sup> April 2020 pending the hearing and determination of the intended Appeal therefrom on condition that the Defendant furnishes a Bank security for the sum of Kshs.10,590,000.00 (so as to cover the element of interest) from a reputable Bank within 60 days of this order.

**Dated, Signed and Delivered in Court at Nairobi this 13<sup>th</sup> Day of July 2020**

**F. TUIYOTT**

**JUDGE**

**ORDER**

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 17<sup>th</sup> April 2020, this Ruling has been delivered to the parties through virtual platform.

**F. TUIYOTT**

**JUDGE**

**PRESENT:**

Mr Ombwayo for the Plaintiff.

Mr Obar for the Defendant.