



REPUBLIC OF KENYA

AT THE HIGH COURT OF KENYA

AT SIAYA

CIVIL APPEAL NO. 48 OF 2019

ICEA LION GENERAL INSURANCE COMPANY.....APPELLANT

VERSUS

CHRIS NDOLO MUTUKU T/A CRYSTAL CHARLOTTE BEACH RESORT.....RESPONDENT

(Appeal arising from Judgment and Decree in Civil Suit Case 80 of 2018 in the Principal Magistrate's court

at Bondo on 9th October 2019 before Hon. E.N. Wasike, Senior Resident Magistrate)

RULING

1. This appeal was admitted to hearing on 16/7/2020 and the court directed that the appellant files and serves a record of appeal within 21 days of the even date. Today's date was fixed for directions and both parties are present.
2. However, the issue arises as to whether there is stay of a money decree and what emerges is that there was a conditional stay granted by the trial court on 6/2/2020 for depositing of Kshs. 600,000/= part of the decretal sum in a joint interest earning account of both counsel. Mr. Odhiambo concedes that such account has not been opened and is in the process of being opened.
3. Mr. Mutuku for the Respondent urges the court to allow for the execution of decree as there is no stay and or enlargement of time for compliance with the conditional stay of 6/2/2020.
4. The appellant's counsel has not stated why there is no compliance and neither has he claimed that the Respondent or other exogenous circumstances have frustrated compliance with conditional stay of 6/2/2020.
5. Order 42 Rule (6)(l) of the Civil Procedure Rules is clear that no appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order.
6. In this case, the court appealed from ordered for a conditional stay which was time bound. There is no compliance with the timelines given and neither is there an order enlarging the timeliness given by the trial court.
7. That being the case, it will be a travesty of justice if this court was stand in the way of a decree holder from executing a decree issued in its/his favour.
8. For the above reasons, I direct that the original trial court file being Bondo PM 80/2018 shall be returned to Bondo PM's court for further necessary action in execution of money Decree.
9. In addition, parties are directed to file written submissions to canvass the appeal. This court is satisfied that the decree being a monetary one and as the amount involved is not colossal, even if the appeal was to be successful, it has not been demonstrated that the Respondent is so impecunious that he cannot reimburse the Appellant.
10. The Appellant has itself to blame for non-compliance and failure to seek extension of time to comply but I do not find that the appeal if prosecuted after execution of decree as there is no valid stay, will be rendered nugatory.
11. The Appellant to file and serve written submissions within 15 days of today.
12. The Respondent to file and serve his written submissions within days of date of service.

13. Mention on 9/11/2020 to confirm compliance and to fix a judgment date.

14. Orders accordingly.

Dated, signed and Delivered at Siaya, this 7th Day of October, 2020

R.E. ABURILI

JUDGE