

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

CIVIL APPEAL NO. 21 OF 2020

KENYA TEA PACKERS COMPANY LIMITED.....APPELLANT/APPLICANT

VERSUS

HEZRON GETUMA T/A HEGEONS AUCTIONEERS.....RESPONDENT

{Being an Appeal against the Ruling of Hon. MC Nyigei – SRM Nyamira dated and delivered on the 26th day of August 2020 in the original Nyamira Chief Magistrate Misc. App. No. 15 of 2019}

RULING

This ruling relates to the Notices of Motion dated 25th September 2020 and 7th October 2020. Both motions seek a stay of execution of the ruling of the court below delivered on 26th August 2020 in CMCC Misc. Application No. 15 of 2020. Both motions are opposed. The same were canvassed by way of written submissions.

I have carefully considered the applications, the replying affidavit and the rival submissions. It is of course an abuse of the court process to file two applications seeking the same orders, against the same respondent on the same issues – (*see Satya Bhama Gadhi v DPP & 3 others [2018] eKLR*). I shall however ignore that and proceed to determine the applications on the merits as I am enjoined to do by **Articles 159 of the Constitution**.

Stay of execution is governed by **Order 42 Rule 6 (1) & (2) of the Civil Procedure Rules**. The main considerations are whether the applicant is likely to suffer substantial loss should the application be rejected and the appeal succeeds. There is also the consideration of the applicant's willingness to deposit security.

The applicant seeks to stay execution of the ruling of the court below pending hearing of the appeal preferred against that ruling. The ruling relates to assessment of the auctioneer's costs in a matter upon which he had been instructed by the respondent. I am satisfied that the appeal filed raises triable issues. As the applicant has prima facie demonstrated that she is likely to suffer substantial loss and this was not rebutted by the respondent, the application has merit. Accordingly, the application is allowed on condition that the entire decretal sum is deposited either in court or in an interest earning account in the joint names of Counsel for the parties within 30 days of this ruling. The costs of the applications shall abide the appeal. It is so ordered.

Signed, dated and delivered in Nyamira this 5th day of November 2020.

E. N. MAINA

JUDGE

Judgement delivered electronically via Microsoft Teams