



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 495 OF 2018

CHAI HOUSING CO-OPERATIVE SOCIETY LIMITED.....APPELLANT/APPLICANT

-VERSUS-

MARIE WAMBUI THANDE.....RESPONDENT

RULING

1. This ruling is premised on the Notice of Motion brought by the appellant/applicant herein dated 5th November, 2020 and supported by the grounds established on its face and the facts stated in the affidavit of **Peter Wachira**. The applicant sought for the following orders:

i. Spent.

ii. THAT this Honourable Court do enlarge the time within which the appellant/applicant is to deposit the security deposit of Kshs.1,007,000/ in a joint account for a further period of 30 days.

iii. THAT this Honourable Court do reinstate and extend the orders for a stay of execution of the ruling delivered on 8th October, 2020 and all consequential orders pending the hearing and determination of the intended appeal.

iv. THAT the costs of the application be provided for.

2. The respondent filed the replying affidavit he swore to oppose the motion. In answer to the replying Peter Wachira filed a supplementary affidavit. When the motion came up for interpartes hearing parties were directed to file and exchange written submissions.

3. I have considered the grounds presented on the face of the Motion as well as the respective affidavits filed in support and in opposition to the Motion. I have likewise considered the rival written submissions.

4. It is clear from the record that the applicant had previously sought for an order for a stay of execution pending the hearing and determination of its appeal to the High Court. Upon hearing the parties over the same, the court vide its ruling delivered on 8th October, 2020 granted the order for a stay of execution on the condition that the applicant deposits the entire decretal sum of Kshs.1,007,000/ in an interest earning account to be held in the joint names of the parties' advocates and/or firms of advocates within 30 days from the date of the ruling, failure to which the order for a stay would automatically lapse.

5. In his supporting affidavit, Peter Wachira who is the Chairman of the applicant avers that whereas the applicant has made diligent efforts to comply with the aforementioned order, it has not been successful owing to the negative impact of the Covid-19 pandemic and hence the delay in complying is purely unintentional.

6. The deponent however states that the applicant has now managed to pool its resources and undertakes to comply with the order within 30 days from the date of extension of the orders earlier issued by the court.

7. It is the assertion of the deponent that unless the orders sought are granted, the applicant is apprehensive that the respondent will proceed with execution, thereby rendering the appeal nugatory.

8. In reply, the respondent states that the instant Motion is simply a delaying tactic to deny her the fruits of her judgment and that this court ought not to entertain the applicant's plight but should proceed to disallow the Motion with costs.

9. In rejoinder, Peter Wachira depones that the appeal arose out of Co-operative Tribunal Case No. 436 of 2019 which is a test suit on liability and that should this court decline to grant the orders sought, then the applicant stands to suffer the risk of multiple claims and execution proceedings against it in respect to a series of suits associated with the test suit, thereby resulting in substantial loss.

10. In its submissions, the applicant reiterated its willingness to comply with the court order of 8th October, 2020 and argues that the delay has not been inordinate.

11. The applicant further argues that this court has discretionary powers to extend the time required for compliance with the aforementioned order and therefore urges this court to exercise its discretion in its favour.

12. It is also the submission of the applicant that the respondent does not stand to be prejudiced in any way should the orders sought be granted, since the decretal amount will be kept in a joint interest earning account which account will be accessible at the conclusion of the appeal.

13. In her submissions, the respondent reiterated the averments made in her replying affidavit, save to add that the applicant made no efforts to contact her regarding the delay in complying and only waited until the last minute to approach this court.

14. The respondent is of the view that the Motion has been brought in bad faith and is an abuse of the court process.

15. After considering the respective positions taken by the parties, it is clear that the applicant has not complied with the conditions set by the court on 8th October, 2020.

16. Upon further considering the reasons given by the applicant, I find the same to be reasonable in the circumstances and upon taking judicial notice of the overarching effects of the Covid-19 pandemic both countrywide and globally.

17. It is also apparent that the instant Motion was filed before the timelines set by the court on 8th October, 2020 lapsed and hence I am satisfied that the Motion has been brought without unreasonable delay. There is also nothing to indicate bad faith on the part of the applicant in bringing the Motion.

18. Further to the foregoing, this court is granted the power to enlarge the time for doing any act pursuant to the provisions of **Order 50, Rule 6** of the **Civil Procedure Rules** cited by the applicant and stipulating that:

“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules, or by summary notice or by order of the court, the court shall have power to enlarge such time upon such terms (if any) as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.”

19. It is evident that the orders now being sought are essentially to enable the Applicant comply with the conditions for a grant of stay of execution given by the court on 8th October, 2020 and nothing more. In the premises, I am of the view that it would serve the interest of both parties to enlarge the time required for the applicant to comply since it has indicated its readiness and willingness to comply with the said conditions.

20. Consequently, the motion dated 5.11.2020 is allowed giving rise to issuance of the following orders:

a) The stay of execution order issued on 8th October, 2020 be and is hereby extended pending the hearing and determination of the appeal on the condition that the applicant deposits the entire decretal sum of Kshs.1,007,000/ in an interest earning account to be held in the joint names of the parties' advocates and or firms of advocates within 30 days from today. In default the order for stay shall automatically lapse.

b) Costs of the motion to abide the outcome of the appeal.

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 11th day of December, 2020.

.....

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant/Applicant

..... for the Respondent