



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 541 OF 2009

DAVID NZIOKA NTHENGE.....PLAINTIFF/RESPONDENT

VERSUS

DE LA RUE CURRENCY AND

SECURITY PRINT LIMITED.....DEFENDANT/APPLICANT

RULING

- 1) The defendant/applicant took out the motion dated 20th August 2020 whereof it sought for *inter alia*, an order for stay of execution of this court's decree pending appeal. The defendant/applicant filed the supporting affidavit sworn by Jane Karani to buttress the application.
- 2) The plaintiff/respondent filed the replying affidavit he swore to resist the motion. The defendant/applicant filed a supplementary affidavit also sworn by Jane Karani to respond to the replying affidavit. When the motion came up for inter partes hearing this court directed the same to be disposed of by written submissions.
- 3) I have considered the grounds set out on the face of the motion and the facts deponed in the rival affidavits. I have also taken into account the rival written submissions plus the authorities cited by the parties. Before considering the substance of the motion, I think it is appropriate to set out in brief the background of the motion.
- 4) The plaintiff filed a work injury claim against the defendant claiming for damages for the injuries he sustained while working in the defendant's currency printing factory. The defendant filed a defence to deny the plaintiff's claim.
- 5) The suit was heard and determined in favour of the plaintiff on 17.7.2020 whereof the plaintiff was awarded as follows:

a) General damages for pain and suffering	<i>ksh.1,500,000/=</i>
b) General damages for loss of earning Capacity	<i>ksh.10,798,128/=</i>
c) Future medical expenses	<i>ksh.6,876,000/=</i>
Total	<i><u>ksh.19,174,128/=</u></i>
- d) **Interest and costs.**
- 6) The defendant/applicant is aggrieved by the aforesaid decision hence it has filed a notice of appeal to challenge this court's decision in the Court of Appeal. The appellant is now before this court seeking for a temporary order for stay of execution of the decree pending appeal.
- 7) The principles to be considered in determining an application for stay are set out in **Order 42 rule 6 of the Civil Procedure Rules**. **First**, an applicant must show the substantial loss the applicant will suffer if the order for stay is denied.
- 8) **Secondly**, the application for stay should be filed without unreasonable delay.
- 9) **Thirdly**, that the provision of security for the due performance of the decree should be considered.
- 10) The first question which should be answered is whether the application was filed without unreasonable delay. The record shows that this court delivered its decision on 17th July 2020 while the application for stay was filed on 20th August 2020. I am satisfied that the application

was filed without unreasonable delay.

11) The second question as to whether the applicant has shown the substantial loss it would suffer if the order for stay is not granted, can be answered by looking at the pleadings and the averments plus the rival submissions.

12) It is the averment of the defendant that the plaintiff is a man of straw hence defendant/applicant cannot be in a position to refund the decretal sum when required hence it will suffer substantial loss. The plaintiff did not controvert the assertion that he is not in a financial position to refund the money should the appeal turn out to be successful. I am satisfied that the defendant/applicant has shown that he will suffer substantial loss if the order for stay is denied.

13) The third and final principle is that on the provision of security for the due performance of the decree. The defendant/applicant has stated that it is ready to deposit the principal sum in an interest earning account. The plaintiff stated that the offer made to deposit the decretal sum will not alleviate his suffering since the appeal may drag on for many years making him unable to meet his medical expenses. I think the offer made by the defendant/applicant to deposit the principal sum appears to be reasonable.

14) In the end, the motion dated 20.8.2020 is allowed.

Consequently, there be a stay of execution of the decree pending appeal on condition that the defendant/respondent deposits the sum of kshs.19,174,128/= in an interest earning account in the joint names of the advocate or firms of advocates appearing in this suit within 30 days from the date hereof failure to which the order for stay shall automatically lapse. Costs to abide the outcome of the appeal.

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 4th day of December, 2020.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff/Respondent

..... for the Defendant/Applicant