



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MILIMANI LAW COURTS**

**ELC APPEAL NO. 30 OF 2019**

**PARAGON ELETRONICS LIMITED.....APPLICANT**

**VERSUS**

**NGINYO INVESTMENT LIMITED .....RESPONDENT**

*(Being an application for stay of execution of Judgement delivered on 15<sup>th</sup> March 2019 by the Chief Magistrates Court at Nairobi (Hon. A N Makau) pending the hearing of an appeal filed)*

**RULING**

1. This is a Ruling in respect of a notice of motion dated 26<sup>th</sup> April 2019. The Applicant seeks stay of execution pending appeal against a ruling delivered by M/s A N Makau on 15<sup>th</sup> April 2019. The Applicant contends that it has preferred an appeal against the said ruling and that if stay is not granted; the Respondent will proceed to execute the decree which will render the appeal nugatory. The Applicant contends that it has a strong appeal with high chances of success.
2. The Applicant's application is opposed through a replying affidavit sworn on 9<sup>th</sup> July 2019. The Respondent contends that the appeal has no merits and that the Applicant has not complied with the provisions Order 42 Rule 6(2) (b). The Respondent further contends that the Applicant's lawyer was represented in Court on the date when the matter proceeded for hearing after an attempt to adjourn was rejected. The Respondent therefore argues that it is wrong for the Applicant to claim that its lawyer was attending to another matter in the High Court.
3. The parties' herein were directed to file written submission on 29<sup>th</sup> July 2019. As at 5<sup>th</sup> November 2019, the Applicants had not filed their submissions. The Applicants were directed to file their submission in the course of 5<sup>th</sup> November 2019. As at the time of writing this ruling, the Applicants had not filed any submissions and if any were filed, then they are not in the file. I have considered the submissions by the Respondent. The only issue for determination in this matter is whether the Applicant has met the threshold for grant of stay pending appeal.
4. The Trial court delivered Judgement on 15<sup>th</sup> March 2019 in which the Respondent was awarded Kshs.819,494.20 with costs and interest. The Applicant then filed an application dated 18<sup>th</sup> March 2019 in which it sought review and setting aside of the Judgement. The application was heard and in a ruling delivered on 15<sup>th</sup> April 2019, the application was dismissed.
5. In an application for stay pending appeal, the Applicant is expected to meet the following conditions. First, the application has to be made without unreasonable delay. Second, the Applicant has to demonstrate that he will suffer substantial loss if stay is not granted. Thirdly, there has to be security given for the due performance of the decree as may ultimately be binding upon the Applicant.
6. In the instant case, the impugned ruling was delivered on 15<sup>th</sup> April 2019. This application was filed on 26<sup>th</sup> April 2019. I therefore find that there was no unreasonable delay in filing it. This is a money decree. In money decrees, it is rare for an appeal to be rendered nugatory. The Applicant has not demonstrated what substantial loss it will suffer if execution is carried out. The Applicant is not saying that it will not recover the decretal sum should it finally succeed in its appeal. As there is no demonstration of substantial loss, I find no merit in this application. The issue of security would have been considered had the Applicant demonstrated that it will suffer substantial loss. I therefore find no merit in this application which is hereby dismissed with costs to the Respondent.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 6<sup>th</sup> day of **February 2020**.

**E.O.OBAGA**

**JUDGE**

In the presence of:

M.s Masumi for Mr Ataka for Applicant

Court Assistant: Hilda

**E.O. OBAGA**

**JUDGE**