



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCA. NO. 13 OF 2017

JEREMIAH MWANZA.....APPELLANT/APPLICANT

-VERSUS-

JOHN NGUMBA.....RESPONDENT/RESPONDENT

RULING

1. The Appellant/Applicant filed this application dated 9th December, 2018 seeking an order of stay of execution of taxed costs in this appeal for a period of six (6) months. The main ground raised by the Applicant is that his premises was broken into by thieves who stole his property worth millions which he is yet to recover. Secondly that he has a loan which is serviced by the said business.

2. He proposes to offset the costs by paying Kshs.10,000/= - 20,000/= pm after a stay of five (5) months. In his supporting affidavit, he expounds on these grounds. He produced EXB1 to show that his place of business was broken into. He also produced a bank statement of his business Makueni Steel Fabrication (EXB2) showing the business has been affected.

3. In his submissions, Mr. Kisongoa for the Applicant stated that the Applicant would be ready to pay the taxed costs by instalments of Kshs.10,000/= - 20,000/= with effect from next month. It was his contention that things had not changed for the Applicant since December 2018, as he is still paying loans. That the motor vehicle he has is his only source of livelihood.

4. The application was opposed by the Respondent through his replying affidavit. He averred that the Applicant is a well to do person who owns several assets and is capable of defraying the taxed costs at once. He denied that the Applicant has school going children.

5. In his submissions, Mr. Nabwere for the Respondent stated that the application lacks merit and is an abuse of the court process. It was his contention that the Appellant was a man of means and could settle the costs at once. He asked for dismissal of the application.

6. The taxed costs herein amount to Kshs.90,550/=. The only dispute is on the mode of payment. The costs were taxed on 16th November, 2018. Since then, no single cent has been paid to settle the claim. This application is dated 9th December, 2018 and was filed on 13th December, 2018.

7. It is therefore 5 ½ (five and half) months since the costs were taxed. As per the application, the Applicant wanted a grace period of six (6) months to embark on payment.

8. After considering the nature of the claim, the affidavits, annexures and the submissions, I direct that the Applicant offsets the taxed costs herein in three monthly instalments as follows:

i. On or before 15th May, 2019 Kshs.25,000/=

ii. On or before 15th June 2019 Kshs.30,000/=

iii. Finally, on or before 15th July 2019 the balance of Kshs.35,550/=.

9. In default, of any one instalment the whole balance becomes due and payable and execution to issue without any further recourse to the court.

Orders accordingly.

DELIVERED, SIGNED AND DATED THIS 2ND DAY OF MAY, 2019 IN OPEN COURT AT MAKUENI.

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H. I ONG'UDI

JUDGE