

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CIVIL APPEAL NO 367 OF 2018

STEPHEN WAMBUGU MWANGI.....APPELLANT

VERSUS

APPEX STEEL LIMITED.....RESPONDENT

RULING

INTRODUCTION

1. The Appellant's Notice of Motion application dated and filed on 8th August 2018 is premised on the provisions of Order 42 Rule 6, Order 51 of the Civil Procedure Rules and all enabling provisions of the law. It seeks a stay of execution of the judgment and decree of Hon D W Mburu (PM) in Milimani Chief Magistrates Court CMCC No 3476 of 2013 delivered on 27th July 2018 pending the hearing and determination of the Appeal. Prayer No (1) therein was spent.

2. The said application was opposed. The Respondent filed Grounds of Opposition dated 31st October 2018 on the same date. The Respondent's Replying Affidavit was sworn by Kush Nathwani on 30th October 2018. The Respondent's List of Authorities was dated 31st October 2018.

3. Having looked at the Appellant's application and Written Submissions dated 24th April 2019 and filed on 29th April 2019 and having heard oral submissions by his counsel and counsel for the Respondent, it was clear that the Appellant had not demonstrated all the conditions set out in Order 42 Rule 6 of Civil Procedure Rules for the granting of a stay of execution.

4. The Appellant's counsel informed this court that his business collapsed. He has not therefore demonstrated any substantial loss that he would suffer. He may have filed his present application without undue delay but he had not indicated that he was willing to deposit any security.

5. Be that is may, as the Respondent's counsel was really not opposed to the stay being granted, the same to be granted on condition of security being deposited and it had not demonstrated the prejudice it would suffer if the order was granted today, I am inclined to balance the interest of the Appellant and that of the Respondent.

DISPOSITION

6. Having considered the Affidavit evidence and the oral and written submissions and case law, I hereby direct as follows:-

1. Prayer No (3) of the Appellant's Notice of Motion application dated and filed on 8th August 2018 is hereby granted on condition that the Appellant shall deposit in a joint interest earning account in the name of his advocates and those of the Respondent the decretal sum of Kshs 2,541,924/= within the next sixty (60) days from today i.e by 15th July 2019 failing which the conditional of stay will automatically lapse.

2. Costs of the application shall be in the course.

7. Orders accordingly.

DATED and DELIVERED at NAIROBI this 13th day of May 2019

J. KAMAU

JUDGE