



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL APPEAL NO. 7 & 9 OF 2018

HOUSING FINANCE CORPORATION LTD.....APPELLANT

VERSUS

PATRICK IKUNDA NANJAU.....APPLICANT

KALOKI JACQUELINE NJURE.....2ND RESPONDENT

RULING

This court set aside Interlocutory injunctive orders granted in Meru CMCC No. 116 of 2017 in judgment delivered on 7th March 2019. The applicant in application dated 22nd May 2019 was aggrieved and he seeks orders that leave be granted to the firm of Norman Otieno and Co. Advocates to come on record for Applicant in place of M/s Mwangi E.G & Co. Advocates and that Notice of change dated and filed 22nd March 2019 be deemed as duly and properly filed.

That the court grants stay of execution of the judgment delivered on 7th day of March 2019. What is pending for determination is prayers 3 & 4 of the application as prayers 1 & 2 are spent.

Has the applicant established sufficient cause to warrant established sufficient cause to warrant grant of stay orders prayed for? The authority relied upon by applicants advocate is apt in the circumstances i.e Halai and Another vs Thoutons & Turpia (1963) Ltd 1990 KLR 365 where court of Appeal Judges Gicheru JA and Chesoni & Cockar JJA held inter alia that:-

- a. the court must be satisfied that substantial loss would be suffered if grant of stay is refused.
- b. That the applicant must furnish security
- c. That the application must be made without unreasonable delay.

Whether there was unreasonable delay in filing application for stay orders, judgement was delivered on 7th March 2019 and the instant application filed on 30th May 2019, 2 months and 23 days later.

The applicant blames his advocates then on record for being absent in court and therefore failing to apply for stay when judgement was delivered but he has not disclosed whether he gave instructions to the advocates to apply for stay of execution within the period when he had right to appeal within 30 days of delivery of judgment.

Secondly, the applicant has not established before this court that he is going to suffer substantial loss of the orders of stay are not granted. This court found that the applicant was not entitled to orders of injunction because his claim was quantifiable and could not be described as irreparable loss. The submissions that the Respondents have failed to demonstrate that they will be able to compensate the applicant if the appeal succeeds is misleading. The applicant didn't plead capability by Respondents to compensate him and so they could not have responded to issues that were not pleaded. That the applicant has a good and arguable appeal is beyond the jurisdiction of this court as it has rendered itself substantively on whether or not the applicant was entitled to the interlocutory injunction.

The finding of this court, inconsideration of the above is that the applicants application for stay has no merit and is therefore dismissed with half costs to Respondents to share. Application for leave to file appeal out of time is allowed. Appeal to be filed within 7 days.

HON A. ONG'INJO

JUDGE

RULING DELIVERED, DATED AND SIGNED IN COURT ON 18TH DAY OF JULY 2019.

In the presence of :

C/A: Kinoti

Mr Thangicia holding brief for N. Otieno for Applicant.

Mr Ashaba holding brief for Ndubi for 2nd Respondent.

Ms Norman Otieno for Applicant – No appearance

Ms Wambugu for 1st Respondent – No appearance.

HON A. ONG'INJO

JUDGE