



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 362 OF 2019

XPLICO INSURANCE CO. LTD.....APPELLANT/APPLICANT

-VERSUS-

IMPREZA COSTRUZIONI GIUSEPPE

MALTAURO SPA.....RESPONDENT

RULING

1. This ruling is precipitated by the appellant's/applicant's Notice of Motion dated 27th June, 2019 supported by the grounds laid out on its body and the facts deponed in the affidavit of *Mike G. Muriithi*. The applicant is seeking for an order for stay of execution pending an already lodged appeal against the ruling of Honourable P. Gesora, learned Chief Magistrate delivered on 20th June, 2019 vide Nairobi C.M.C.C. no.1010 of 2018.
2. The respondent filed replying affidavit of *Fredrick Njogu* and the supplementary affidavit of *Mike G. Muriithi* to oppose the motion..
3. The learned advocates appearing in the matter made oral submissions over the subject of provision of security, which is what is in dispute here. On the one part, Mr. *Githinji* learned advocate for the applicant has offered a title deed as security for the due performance of the decree while on the other part, Mr. *Kiplagat* learned counsel for the respondent stated that the same is not acceptable given that the matter involves a money decree. However, the respondent's counsel did not propose the preferred type of security
4. I have considered the grounds set out on the face of the Motion and the facts deponed in the affidavits in support and against the motion.
5. A summary background of the matter is that the respondent instituted a suit against the appellant by way of a plaint dated 14th February, 2018 seeking to be paid Kshs.18,826,434/= for the damage occasioned to its milling machine which stood covered by an insurance policy taken with the appellant.
6. Upon the close of pleadings, the respondent filed an application seeking to have the applicant's defence struck out on the basis that the same does not raise triable issues. The application was opposed by the applicant.
7. In the end, the trial court heard and allowed the application and moved to strike out the statement of defence with costs. Being aggrieved with the aforesaid decision, the applicant has now lodged an appeal.
8. Having given the brief background of the dispute, it is time to determine the question as to what is the appropriate form of security should be given for the due performance of the decree . When it is a monetary decree, it is expected that security provided ought to be commensurate to the decretal sum. However, the court still retains a wide discretion to determine the appropriate security depending on the circumstances of each case. In this instance, a title deed has been offered. In my view, this would not constitute an appropriate security given that should the appeal ultimately fail, the process of recovering the security will likely be a long and tedious one, involving a range of proceedings. I would therefore be hesitant to allow the same.
9. However, I will exercise my discretion in granting the prayer for a stay of execution pending appeal on the condition that the applicant deposits the entire decretal sum of Kshs.18,826,434/= in an interest earning account in joint the names of the respective advocates or depositing the said amount in court within 30 days from the date of this ruling in default the motion will be treated as having been dismissed..

Dated, Signed and Delivered at Nairobi this 12th day of July, 2019.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant/Applicant

..... for the Respondent