

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISC. APPLICATION NO. 632 OF 2018

SOROYA INVESTMENTS LIMITED.....APPLICANT

VERSUS

BONIFACE MASINDE T/A BONIFACE MASINDE & CO. ADVOCATES...1ST RESPONDENT

GALAXY AUCTIONEERS.....2ND RESPONDENT

RULING

This is an application by way of Notice of Motion dated 26th March, 2019 seeking a stay of execution of the judgment of the lower court delivered on 28th September, 2018. The application is supported by grounds set out on the face of the application alongside a supporting affidavit sworn by a manager of the applicant.

The application is opposed and the respondent filed a replying affidavit. Both parties have also filed submissions to address the application. It is important to observe from the outset that the applicant has the right of appeal and at the same the respondents have a judgment which they desire to execute.

In addressing applications of this nature, the court has to balance the interests of both parties avoiding prejudice that may be occasioned in the process. The claim in the lower court was for a refund of rent paid by the respondents to the applicant. This is a money decree. That notwithstanding, every party in a contested matter should be allowed to exhaust all the avenues available before being driven from the seat of justice.

I am guided by the cited authorities and also note that, the applicant is ready and willing to secure the decretal sum by way of depositing the same in a joint interest earning account, which order if allowed shall secure the interest of the respondents. I have no doubt that the respondents may be in a position to repay the decretal sum in the event the appeal succeeds.

That notwithstanding, I believe in the interest of justice the order sought should be allowed. Accordingly the application dated 26th March, 2019 is hereby allowed on condition that, the applicant shall cause to be deposited the entire decretal sum in an interest earning account in the names of both advocates appearing for the parties within 30 days from the date of this ruling. In default execution shall proceed.

Dated, signed and delivered at Nairobi this 7th Day of November, 2019.

A. MBOGHOLI MSAGHA

JUDGE