



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CORAM: D. S. MAJANJA J.

CIVIL CASE NO. 20 OF 2012 (OS)

BETWEEN

ZINGO INVESTMENTS LIMITED.....PLAINTIFF

AND

KENYA MEAT COMMISSION.....DEFENDANT

R U L I N G

1. The plaintiff's Notice of Motion for consideration today is dated 21st March 2019 and it is supported by the deposition of its Managing Director, Robert Njoka Muthara. It seeks an order that the sum of Kshs. 14,467,378.00 deposited in Court be released to the plaintiff/applicant. The gravamen of the plaintiff's case is that the defendant has not complied with or impeded implementation of the orders of stay directing that the decretal amount be deposited in a joint account in the names of the advocates for both parties pending hearing and determination of the appeal.

2. The application is opposed by the defendant through the deposition of its Company Secretary, Allan Kamau. The thrust of the affidavit is that the defendant has done all that it could to facilitate the opening of the joint account however the process was delayed by the fact that the court file was missing and that when it was available the amount could not be released from the court as the original document used to transmit the funds to court was required and was not readily available. Counsel for the appellant urged the court to dismiss the application as the defendant was ready and willing to comply with the orders for deposit of the amount in the joint account.

3. The facts leading to this application are not in dispute. The plaintiff obtained a decree in its favour on 13th March 2014. Thereafter the defendant evinced its intention to appeal against the decree and thereafter applied for orders of stay of execution. On 10th April 2015, the court made an order of stay conditioned on the defendant depositing the said sum in court within 14 days if it was unable to secure the opening of a joint account in the names of the advocates of the parties. Since the defendant did not comply, execution commenced and the defendant once again moved the court which was for an order of stay and extension of time to file its appeal. In the ruling dated 1st October 2015, the court made an order that the defendant should file its record of appeal with 14 days as a term for the stay of execution.

4. While I agree that the defendant has made efforts to deposit the decretal amount to court, I doubt that I can accede to the defendant's plea for indulgence as the stay orders in place have since lapsed. Further, the conditions upon which the right of appeal was to be exercised have also lapsed. In the ruling dated 1st October 2015, Ochieng J., stated as follows:

[49] In the circumstances, I direct that the defendant should file its record of appeal within the next 14 days. During the period of the next 14 days, they shall be a stay of execution.

5. From the aforesaid ruling, it is now clear that the stay has lapsed as no appeal has been lodged to date. By accepting the defendant's plea, this court would be staying execution when the time for the filing the appeal has lapsed. An order of stay cannot exist in a vacuum.

6. There is no legal or factual basis for me to reject the plaintiff's application. It is now entitled to enjoy the fruits of its judgment as the defendant's rights of appeal has been exhausted by failure to lodge its appeal within the time limited by the court.

7. I allow the plaintiff Notice of Motion dated 21st March 2019 and direct that the sum of Kshs. 14,467,378.00 deposited in court by the defendant be released to the plaintiff through its advocates on record forthwith. The plaintiff is awarded costs of the application assessed at Kshs. 10,000.00.

DATED and DELIVERED at NAIROBI this 20TH day of NOVEMBER 2019.

D. S. MAJANJA

JUDGE

Court Assistant: Mr M. Onyango

Mr Muriithi instructed by Kinyua Muriithi and Company Advocates for the plaintiff.

Mr Nyatichi instructed by Keengwe and Company Advocates for the defendant.