

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 482 OF 2019

SPERO AFRICA LIMITEDAPPELLANT/APPLICANT

VERSUS

AFRICERT LIMITED.....RESPONDENT

RULING

The lower court delivered a judgment in favour of the respondent against the applicant on 17th July, 2019. The applicant was dissatisfied with that judgment and filed an appeal on 19th August, 2019. Alongside the memorandum of appeal, a Notice of Motion was also filed for stay of execution of that judgment. The application is premised upon Sections 1A,1B,3A and 79G of the Civil Procedure Act and Order 42 Rule 6 (1) and (6) of the Civil Procedure Rules. There is also a supporting affidavit sworn by the advocate for the applicant.

The application is opposed and the respondent has filed a replying affidavit sworn by the Finance Manager. Both parties have filed submissions in the argument of the application and cited some authorities. These I have considered. The parameters of addressing such applications are now settled.

The application was filed within reasonable time and what the applicant was supposed to establish is that, if the order is not granted substantial loss may result. The respondent has submitted that the applicant has not offered any security.

It should be made clear that under the rules, it is the court to order security for the due performance of such decree as may be ultimately issued against the applicant. That is to say, it may add value if the applicant offers security, but in the event that offer is not forthcoming the court may not deny the applicant such an order.

The applicant has alluded to the appeal being rendered nugatory if the order is not granted. I have the duty to balance the interests of the parties herein. The applicant has the right of appeal but also the respondent has a judgment in its favour anxious to execute. The discretion of the court is called upon in such circumstances.

I order that there shall be a stay of execution provided that, the applicant shall deposit the entire decretal sum in an interest earning account in the joint names of both advocates for the parties within 30 days from the date of this ruling.. In default execution shall proceed. Costs shall abide by the decision of the appeal.

Dated, signed and delivered at Nairobi this 9th Day of December, 2019.

A. MBOGHOLI MSAGHA

JUDGE