

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL APPEAL CASE NO. 23 OF 2011

ALLOY STEEL CASTING LTD.....APPELLANT/RESPONDENT

VERSUS

LUKE ONDITI ONKUNDI.....RESPONDENT/APPLICANT

RULING

1. The application dated 1st February, 2018 is brought under Order 43 rule 1(2) of the Civil Procedure Rules and Section 75 of the Civil Procedure Act.

2. The application seeks orders that leave be granted to the Plaintiff/Applicant to appeal the ruling and order made on 30th January, 2018.

3. It is stated in the grounds and the affidavit in support of the application that the Applicant is aggrieved by the ruling of this court delivered on 30th January, 2018 and wishes to appeal but requires leave to do so. The Applicant has pointed out that unless leave is granted he stands to be burdened by an order made by the court as the order exceeds the consent made by the parties. It is further stated that the order the subject of the application bars the Applicant from claiming the costs of the appeal.

4. The application is opposed as per the grounds of opposition dated 14th February, 2018 which state as follows:

1. That the Notice of motion dated the 1st day of February, 2018 lacks merit and is an abuse of the Court process, as there has to be an end to litigation.

2. That the legal threshold for granting leave to appeal an order has not been established and or met by the Applicant herein.

3. That the Respondent/Applicant has not demonstrated intention to lodge an appeal, and similarly he has not demonstrated that he has a meritorious appeal, and hence the Notice of Motion is merely speculative and ought to be dismissed with costs.

5. The application was canvassed by way of written submissions which I have considered alongside the authorities cited.

6. The order sought to be appealed from is not appealable as a matter of right. The application raises arguable grounds of appeal which merit consideration. Consequently, I allow the application with costs in cause.

Date, signed and delivered at Nairobi this 19th day of July, 2018

B. THURANIRAJADEN

JUDGE