



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CIVIL APPEAL NO. 8 OF 2018

KONONIN TEA GROWERS SACCO SOCIETY LTD....APPLICANT

-VERSUS-

JOSEAH KIPRONO LANGAT.....RESPONDENT

(Being an appeal from the judgment and decree in Sotik PMCC No. 71 of 2013 Hon. Omwansa – PM)

RULING

The Notice of Motion application dated 11th of July 2018 seeks the following orders:-

1. Spent

2. That pending the hearing and determination of this application this court be pleased to issue an order of temporary stay of the order dated 26th June 2018 issued in Sotik PMCC No. 71 of 2013.

3. That pending the hearing and determination of the appeal herein there be a stay of execution of the ruling dated 26th June 2018 issued in Sotik PMCC NO. 71 of 2013 and or this court be pleased to grant an order setting, varying and substituting therefore an order of stay of execution of the judgment dated 22nd March 2018 pending the hearing and determination of the appeal.

4. The grounds are:-

(i) That vide an order dated 26th June 2018 the lower court directed that the Respondent be paid half of the decretal sum.

(ii) That half of the decretal amount which has been ordered to be released to the Respondent within 21 days is a substantial amount of money.

(iii) That the appeal has overwhelmingly high chances of success and unless the orders sought are not granted, the appellant will be prejudiced.

(iv) That it would be impossible to recover such a substantial amount of money from the Respondent in the event the appeal succeeds.

(v) That the Respondent will not suffer any prejudice as the decretal sum will still be paid to him in the unlikely event that the appeal is unsuccessful as the appellant is a large corporation with sound financial base.

(vi) That the appellant is ready and willing to abide by any orders conditions and or directions that this court may impose.

5. Back ground On the 22nd March 2018, judgment was delivered in Sotik PMCC No. 71 of 2013 whereby the plaintiff/Respondent was awarded Kshs.1,300,000/= as general damages and Kshs.50,000/= as special damages for malicious prosecution.

Subsequently, the court ordered that there be stay of execution on condition that half of the decretal amount be paid to the Plaintiff/Respondent.

This is the bone of contention. The applicant has no objection to the decretal sum being deposited in court. Its fears are that if half of the

decretal amount is paid to the plaintiff/Respondent he may not be able to refund.

At paragraph 8 of the replying affidavit the Respondent avers that he is not a man of straw having been the manager of the appellant/applicant and has secured a well paying job and hence is in a position to refund the decretal sum if the court so orders.

I am of the considered view that the applicant's apprehensions that Respondent may not be in a position to refund half the decretal amount in the event that the appeal succeeds are well founded. The application for stay is allowed but on the condition that the decretal amount be deposited in court within 21 days from the date of this ruling.

Costs in the cause.

Ruling delivered dated and signed in open court this 18th September 2018 in the presence of Orina learned counsel for the applicant, learned counsel Mr. Koko absent, court assistant Mr. Rotich.

M. MUYA

JUDGE

18/9/18