



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE No. 815 of 2007**

**NAFTALI NJOROGE NJAU .....PLAINTIFF**

**VERSUS**

**POLYPIPES (STEEL DIVISION) LIMITED.....DEFENDANT**

**RULING**

On 31<sup>st</sup> March, 2016 this court delivered a judgment in favour of the plaintiff herein in the total sum of Kshs. 5,948,221.60. There was already on record a consent judgment on liability to the extent of 80% against the defendant and 20% contributory negligence on the part of the plaintiff.

The defendant was aggrieved by the said award and filed a Notice of Appeal. This was followed by an application dated 22<sup>nd</sup> June, 2016 seeking the substantive order that there be a stay of execution of the judgment pending the hearing and determination of the appeal filed by the defendant, this being appeal No. 135 of 2016.

The plaintiff filed grounds of opposition to the said application. Both learned counsel have filed submissions and cited some authorities which I have noted.

The grounds advanced for seeking the said order are that the appeal is arguable and has high chances of success, the plaintiff is a person of limited financial means, that if the appeal succeeds the defendant shall not be able to recover the decretal sum from the plaintiff and that unless the order is given the appeal shall be rendered nugatory.

On the other hand, the plaintiff has stated that the appeal is not arguable and has no chances of success, since the judgment of the court was pursuant to consent orders recorded on 16<sup>th</sup> and 20<sup>th</sup> September, 2015. Further, there has been inordinate delay in filing the application. Additionally, the defendant will not suffer any substantial loss and in any case it has not offered to deposit the decretal sum in a joint interest earning account or in court.

I have considered the material before me. The appeal is against quantum only because the judgment on liability was by consent. The defendant has submitted that it is willing to comply with any condition imposed by the court and that it has fulfilled the requirement under Order 42 Rule 6 of the Civil Procedure Rules. The defendant has the right of appeal. The application was filed 3 months after the said judgment but in the circumstances obtaining, this cannot be said to be too late.

Whether or not the appeal is arguable is not for me to determine at this stage. However, considering there is a judgment on liability, strict terms shall apply in granting the order for stay.

I allow the application on the following terms. The defendant shall pay to the plaintiff a sum of Kshs. 2,000,000/= out of the total decretal sum. The balance of Kshs. 3,948,221.60/= shall be deposited in an interest earning account in the names of both advocates appearing for the parties. These conditions shall be fulfilled within 30 days from today.

Costs in the cause.

**Dated and delivered at Nairobi this 17<sup>th</sup> Day of January, 2017.**

**A.MBOGHOLI MSAGHA**

**JUDGE**