

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT APPEAL NO. 576 OF 2016

HWANGSUNG INDUSTRIES LIMITED.....APPELLANT

VERSUS

PETER MULINGE SYANDA.....RESPONDENT

RULING

The lower court gave judgment in favour of the respondent against the applicant herein following a personal injury claim. The judgment of the lower court is not part of this record but from the Memorandum of Appeal dated 1st September and filed on 6th September, 2016, the respondent was injured within the premises of the appellant in the course of some duties. An award of Kshs. 90,000/= was given as general damages plus costs and interest. The appellant filed an appeal arising therefrom.

There is now before me an application by way of Notice of Motion under Order 42 Rule 6 (1) and (2) and Order 51 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the Civil Procedure Act, seeking an order that there be a stay of execution of the lower court judgment pending the hearing and determination of the appeal.

It is the appellant's case that if the order is not granted, substantial loss may result and that the application has been brought without undue delay. It is also the appellant's case that it is ready to offer security by depositing half of the decretal amount in a joint interest account in the names of both counsel on record. Both counsel have filed written submissions and cited some authorities which I have noted.

The application was filed timeously and the appellant cannot be faulted in that regard. The affidavit in support of the application was sworn by one Jae Young Jang who described himself as the applicant. The appellant is a limited liability company, so the deponent cannot be the applicant as the two are two separate legal entities. That notwithstanding I see no prejudice and in any case the decision shall not turn on the description of parties. The appellant has the right of appeal and the Memorandum of Appeal raises substantial arguable issues.

There is an offer to provide security and so the respondent cannot submit that his judgment is not secured. Although the appellant has offered to deposit half of the decretal sum, the amount awarded does not appear substantial.

Accordingly I am persuaded that the application should be allowed. There shall be a stay of execution pending the hearing and determination of the appeal. The appellant shall deposit the decretal sum in an interest earning account in the names of both advocates within 30 days from the date of this ruling. The costs shall be on appeal.

Dated, signed and delivered at Nairobi this 2nd Day of March, 2017

A. MBOGHOLI MSAGHA

JUDGE