



REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL CASE NO.18 OF 2013

TERRY KANYUA MARANGU.....PLAINTIFF/APPLICANT

VERSUS

WELLS FARGO LIMITED.....DEFENDANT/RESPONDENT

RULING

The plaintiff herein brought application pursuant to section 3 and 3A of the Civil Procedure Act under Certificate of Urgency seeking inter alia that the defendant/Respondent be ordered to supply the plaintiff/applicant with copies of bank statements of the joint account that decretal sums of Ksh 8,456,500 was deposited into pending the hearing and determinations of the application. The applicant also requested that the respondent be ordered to pay Ksh. 4,228,250/= to applicant together with half the accrued interests to cater for her medical expenses and subsistence pending hearing and determinations of the intended appeal.

The application was based on grounds on the face of application and annexed supporting affidavit and exhibits.

The application was opposed vide Replying Affidavit sworn by Karomo Paul Ngigi, Advocate on 1st day of February 2017. The applicant counsel and defence/ Respondents counsel sought to rely on their averments in their respective affidavits to support and/or oppose the application.

What this court has picked from the 2 affidavits is that Hon. Justice Makau delivered a judgment in this matter on 16th day of October 2014.

On 10th December 2014, application for stay of execution dated 7th November 2014 was allowed by consent of the parties on conditions the decretal sums were deposited within 45 days in an interest earning account in the joint names of the advocates for the parties. In default execution was to issue upon costs of the suit being assessed. I have also seen that Respondents counsel has annexed a copy of Notice of Appeal bearing Meru High Court stamp dated 23rd October 2014 drawn by M/S J. K. Kibicho & Co. Advocates for the intended Appellant.

To date the intended Appeal has not been lodged and the reason given by respondents counsel at paragraph 10 and 11 of the Replying Affidavit is that reason for delay was occasioned by plaintiff numerous applications to the court. I have seen application for change of advocate and another for setting aside consent order for stay of execution. This is the 3rd application since 2014 that the plaintiff is making.

The Respondents counsel has also averred that release of the decretal sums to the applicant would

prejudice the outcome of the intended appeal as the intended appeal is in respect of the entire judgement.

The Respondents advocate conceded to the fact he was aware applicant suffered severe injuries but claimed there was no evidence that her current situation requires urgent medical intervention. In any case he urged that the applicant is a surveyor and can use her sources of income to secure medical attention.

At paragraph 12 the Respondents counsel avers that the proceedings are now ready and it is only fair and in the interests of Justice that the defendant be allowed to prosecute its appeal without multiple applications being filed.

In his ruling on 19th September 2016 Hon Justice Gikonyo ordered that proceedings be typed and supplied to Respondents counsel in 30 days time. He regretted delay but didn't attribute it to applicant.

On 23.10.2014 the Respondents counsel wrote a letter seeking to be supplied with certified copies of proceedings and on the same day was issued with copy of typed judgement, Notice of Appeal was also filed on 23.10.2014 upon which application to stay of execution was made and granted a consent of the parties.

There is nothing else on record to demonstrate respondents have made any reasonable efforts to secure the proceedings even by way of letters of complaint to the Deputy Registrar or to Presiding Judge. In any case nothing prevents the Respondent to file Records of Appeal in the court of Appeal even using the copy of judgment supplied and subsequently file a supplementary record of appeal by leave of the court.

From the copies of proceedings in the court file they were ready by end of December 2016 and the Replying Affidavit by the Respondent /defence counsel was filed on 2nd February 2016. Upto that point there is no proof that the intended appeal had been filed more than one month after the proceedings were ready.

Thirdly no evidence has been availed to prove that the decretal sums were deposited as ordered on 10th December 2014. This court finds that there has been inordinate delay suspected to be meant to frustrate and defeat the applicant/Plaintiff in enjoying the fruits of her judgment. In those circumstances it is ordered that the Respondent avails into the court details of the Bank and Account No. into which the decretal sums were deposited to be verified by the Deputy Registrar. This court also makes an order that upon the Deputy Registrar verifying the bank into which the decretal sums were deposited, a sum of Kshs 2,956,500 out of the decretal sums be disbursed to the applicant/plaintiff to cater for her medical expenses. It is also ordered that in the event the Respondent fails to fill the intended appeal within 21 days from the date of the ruling herein, the entire decretal sums shall be disbursed to the plaintiff forthwith. Costs of this application shall be in the cause.

Ruling Signed Delivered and Dated this 3rd Day of March 2017.

A. ONG'INJO

JUDGE