



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE

CIVIL APPEAL NO. 6 OF 2016

MID AFRICA HOTEL COMPANY.....1ST APPELLANT/APPLICANT

LAWRENCE DUNCUN LTD.....2ND APPELLANT/APPLICANT

JACOB OTWANE3RD APPELLANT/APPLICANT

VERSUS

SETH LUKONZO LUKANORESPONDENT

**[An appeal from the original Kitale CMCC 131 OF 2015 delivered on 2/2/2016 BY C.N. MUGO,
Resident Magistrate]**

RULING

This is an application dated 21/10/2016 brought by way of certificate of urgency by the applicant seeking stay of execution of the decree in Kitale CMCC No 131 /2015 pending the hearing and determination of the appeal herein. It is supported by the affidavit of Lawrence Lumbasyo Otiende sworn on the even date.

Briefly the applicant has attached a copy of the lower court judgement in which the applicant is required to pay to the respondent the sum of kshs 123,500 to satisfy the same.

The applicant being dissatisfied has filed an appeal vide the Memorandum of Appeal dated 2nd March 2016. He has further attached a copy of the proclamation in which its goods have been proclaimed by the respondent in attempt to satisfy the decree.

The respondent has filed a replying affidavit sworn on 26/10/2016 in which he has argued that the said application is frivolous and vexatious and to say the least it is meant to delay enjoyment of the fruits of the judgement.

Order 42 rule 6 of the Civil Procedure Rules in which this application is premised is clear on the grounds in which such orders can be granted namely

- 1) If substantial loss may result to the applicant unless the orders are granted.
- 2) The application has been made without undue delay
- 3) Security for costs for the performance

I find that the application is meritorious. The same has been made without undue delay. For whatever the appeal is worth it is not for this court at this juncture to interrogate. Further, and contrary to the averments in the respondent's replying affidavit this application is not for review of the judgement but for stay pending appeal.

In the interest of justice and so as not to prejudice the respondent if the appeal is rendered nugatory I do order as follows;

- 1) There be stay of execution of the decree in Kitale CMCC No 131 of 2015 pending the hearing and determination of the appeal herein.
- 2) The applicants within 30 days from the date herein deposit in a joint interest account the sum of Kshs 123,500 in the names of both advocates on record.
- 3) In default of (2) above execution shall issue forthwith.
- 4) Costs to the respondent.

Delivered this 5th day of December 2016.

H.K. CHEMITEI

JUDGE

In the presence of ;

Oneli for Nyamu for Applicant

No appearance for Respondent

Kirong – Court Assistant