

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NUMBER 1177 OF 2006

DAVID N NYAMU.

APPLICANT/J. DEBTOR

VERSUS

**INSURANCE TRAINING AND EDUCATION TRUST-REGISTERED TRUSTEES... 1ST
RESPONDENT/D. HOLDER**

RULING

The application before the court is an Amended Notice of Motion by the Plaintiff/Judgment Debtor dated 27th September, 2012. It seeks inter alia, an order of stay of execution pending the hearing and final determination of an Appeal from this court to the Court of Appeal. The judgment is for liquid money of Ksh.1,916,389/28 which has by court interest but without costs grown up to Ksh.3,526,156/- by middle April 2013. The decree sum arose when this court dismissed the applicant's plaint but allowed a counter-claim, mainly on admission of liability by the applicant during the trial of this suit.

The record shows that the applicant sought stay of execution immediately on delivery of the judgment. He was given an interim stay of execution for 21 days on condition that he filed a formal application for stay which apparently he failed to honour.

Six months done the line when the Respondent threatened to execute the decree the Applicant made negotiations with the Respondent/Decree-Holder to pay by certain instalments which apparently he did not follow up.

Be that as it may in this application, the Applicant was ordered to deposit a sum of about Kenya Shillings (2) two million as a condition for being granted an interim stay until the hearing of this application and ruling is done.

In so far as delay to file this application is concerned, the applicant is guilty of laches. He indeed filed this application after an inordinate delay and outside the period this court prescribed to him when it granted a 21 days original temporary stay.

As to substantial loss and high chances of success of the intended appeal, this court would wish to say very little. However, the court cannot close its eyes to the fact that the liability which led to this decree arose from admissions by the applicant during the trial. It is difficult to see the Court of appeal reversing an express admission of liability which this was.

If the court accordingly, refuses to grant a stay of execution the Applicant would not now or later suffer any substantial loss since chances to require a refund of the sums received from him are not likely to arise. Furthermore, even if they were to arise, the Respondent has capacity to refund and has not been shown to be made of dry grass. The Applicant must have realized so when he made offers to settle by instalments – large instalments.

I have perused the record. It is the view of this court that the Applicant has not conducted himself with honesty and candidness. He appears to have used every trick in the book to delay payment, including application of pretended negotiations to pay by instalments whereby he shifted goal-posts to fail the same.

Be the above what it may, I find that the applicant has failed to demonstrate that he has sufficient reasons for obtaining stay of execution. This application for stay must, therefore fail. It is hereby dismissed with costs.

The Respondents sought release of the funds already deposited in court as part of the decretal sum. I see no good reason for detaining the money until the appeal is finally determined. I order that the funds be released to the Respondents/Decree-Holder without any further delay. Orders are made accordingly.

Dated and delivered at Nairobi this 11th day of February, 2015.

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D A ONYANCHA

JUDGE