



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**HCCC NO. 5 OF 2010**

**FLEETWOOD ENTERPRISES LTD.....PLAINTIFF/RESPONDENT**

**=VERSUS=**

**KENYA POWER & LIGHTING CO. LTD.....DEFENDANT/APPLICANT**

**R U L I N G**

**Introduction:**

1. What is before me is the Defendant's Application dated 13<sup>th</sup> January 2015 seeking for the following orders:

**(a) THAT this Honourable Court be pleased to grant a stay of execution of Judgment delivered on 7<sup>th</sup> November 2014, decree and all other consequential orders emanating therefrom pending the hearing and determination of the appeal**

**(b) THAT cost of this Application be provided for.**

2. The Application is premised on the grounds that the Applicant has already preferred an appeal against the Judgment of the court; that the appeal will be rendered nugatory unless the Judgment delivered on 7<sup>th</sup> November 2014 is stayed and that no prejudice will be caused to the Plaintiff if the application is allowed.

3. The Plaintiff filed Grounds of Opposition in which it averred that the Application does not demonstrate the substantial loss it will suffer if the orders of stay are not granted; that the Defendant has therefore failed to satisfy the main requirement for the grant of an order of stay and that the Application lacks merit.

4. The Defendant's advocate submitted that the Judgment of the court poses a great threat to the Applicant; that removing the supply lines will cripple the Applicant's source of revenue and that the Applicant will suffer great loss unless the order of stay is granted.

5. The Plaintiff's counsel submitted that the Defendant has not demonstrated that it will suffer substantial loss if the stay sought is not granted; that a review of the Affidavit of Jane Boil confirms that nowhere in the affidavit has it been alleged that the Defendant will suffer substantial loss and that the Application should be dismissed.

6. The Plaintiff's counsel submitted that it is not for the court to investigate the loss that shall be suffered

by the Defendant if the order of stay is not granted.

7. Order 42 Rule 6(2) of the Civil Procedure Rules provides that no order of stay of execution shall be made unless the court is satisfied that substantial loss may result to the Applicant unless the order is made and the application has been made without unreasonable delay. The Applicant is also supposed to give security for the due performance of the decree.

8. I have gone through the entire Supporting Affidavit of Janet Boil, the Defendant's Assistant Legal Officer.

9. In the Affidavit, the Defendant's Legal Officer does not state how the Defendant shall suffer substantial loss, or any loss, if the order of stay is not granted.

10. It is not for this court to investigate or speculate the kind of loss that the Applicant is likely to suffer if it re-routes its supply lines to serve its clients pending the hearing of the Appeal.

11. It is not right for the Applicant's advocates to raise the kind of loss that shall be suffered by his client in the submissions. Natural justice demands that a party ought to be given an opportunity to respond to allegations or issues raised by the opposite party in his affidavit.

12. Having failed to state the loss it shall suffer if it complies with the Judgment of this court, I decline to allow the Application dated 13<sup>th</sup> January 2015. The Application dated 13<sup>th</sup> January 2015 is therefore dismissed with costs.

Dated and delivered in Malindi this 3<sup>rd</sup> day of **July** 2015.

**O. A. Angote**

**Judge**