



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**CIVIL APPEAL NO 318 OF 2013**

**INSTA PRODUCTS EPZ LIMITED.....APPELLANT**

**VERSUS**

**COBRA SECURITY COMPANY LIMITED.....RESPONDENT**

**R U L I N G**

1. On 10/07/2013 the court herein (Waweru, J) granted the Appellant a conditional interim stay of execution of a money decree pending hearing of the Appellant's application for stay pending disposal of the appeal. That condition, which was met, was for deposit into court within (10) days of the decretal sum (for purposes of the order KShs 704,000/00).
2. The application for stay pending disposal of the appeal was eventually heard. It was refused by a ruling delivered on 30/01/2014 (Ougo, J). The court also refused to grant a temporary stay pending approach to the ***Court of Appeal***.
3. The Respondent in the appeal (who is the beneficiary of the decree of the lower court) subsequently applied by notice of motion dated 14/02/2014 for the main order that the aforementioned sum of KShs 704,000/00 deposited in court by the Appellant be released to the Respondent in payment of the decree. That application is the subject of this ruling.
4. The Appellant has opposed the application by **grounds of opposition and replying affidavit, both dated and filed on 20/03/ 2014**. The grounds of objection include -

- i. That the Respondent has not followed the correct procedure for execution of decree as set out in **Order 22** of the **Civil Procedure Rules** (the **Rules**), and that therefore the application is an abuse of the process of the court.
- ii. That in any event the Appellant intends to appeal against the dismissal of its application for stay pending disposal of the appeal, and has manifested such intent by filing the requisite notice of appeal, and will shortly apply before the ***Court of Appeal*** for stay of execution.

iii. That granting the order sought will seriously prejudice the Appellant.

5. I have considered the submissions of the learned counsels. No authorities were cited. The main thrust of the Appellant's opposition to the Respondent's application is that if the Respondent is desirous of executing its decree, it must comply strictly with the provisions of Order 22 of the Rules and apply to the lower court (the court that issued the decree) for execution in one of the several ways provided for in that Order, and that it cannot take a short-cut by applying for release of the deposit of KShs 704,000/00.

6. The question that immediately comes to mind then is this: what was the deposit for? The deposit was to secure the Respondent's decree in exchange for an interim stay of execution pending disposal of the Appellant's application for stay pending appeal. The application was heard and ultimately refused. In these circumstances, should not the amount that was deposited in court to secure the Respondent's decree be now available to it towards satisfaction of the decree? After all, there is no longer in place any stay to stop the Respondent from enjoying the fruits of its judgment!

7. And the Appellant having made those fruits ready and available by way of the deposit in exchange for the interim stay of execution (which ultimately lapsed upon dismissal of its application for stay

pending appeal), why should it be necessary to apply for execution under Order 22? That is a mere technicality. Is the Appellant suggesting that it should be allowed to retrieve the deposit and the Respondent then to try its luck at execution under Order 22? Those would be mere games, and the court will not play them!

8. The Respondent's application invokes the inherent power of the court. It is properly before the court. I see no reason to refuse the application. It is allowed as prayed with costs. The sum of KShs 704,000/00 deposited in court by the Appellant shall be released to the Respondent towards satisfaction of the decree. Those will be the orders of the court.

**DATED AND SIGNED AT NAIROBI THIS 8<sup>th</sup> DAY OF MAY 2014**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED THIS 9<sup>TH</sup> DAY OF MAY 2014**