REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT KITALE.

CIVIL APPEAL NO. 19 OF 2014.

GRACE OKUMU)

IRENE OKUMU) :::::::::::::::::::::::::::::::: APPELLANTS/APPLICANTS.

VERSUS

PAUL FUNDI ARAP BOSS :: RESPONDENT.

R U L I N G.

The application dated 25th July, 2014 by the applicant/appellant, **Irene Okumu**, is essentially for stay of execution of the orders made on the 22nd July, 2013 in Kitale CMCC No. 352/13 pending the hearing and determination of an intended appeal and for the release of the applicant on bond pending hearing and determination of the appeal.

There are four (4) grounds in support of the application and these are enhanced by the averments contained in the applicant's supporting affidavit dated 25th July, 2014.

Ground one (1) is that the Lower Court ruling was not based on the relevant laws relating to contempt.

Ground two (2) is that the appeal has high chances of success.

Ground three (3) is that the appeal will be rendered nugatory unless the orders sought are granted and Ground four (4) is that it is necessary in the interests of Justice that the orders sought be granted.

The respondent, **Paulo Fundi Arap Boss,** filed a replying affidavit dated 15th September, 2014, in which he contends that the application is incompetent and lacks substantive merits and that the ruling made on the 22nd July, 2014, was premised on contempt proceedings. He also contends that the first appellant, **Grace Okumu**, is at large despite the existence of a warrant of arrest against her and that the appellants have not demonstrated or given sufficient reasons for stay of execution. That, the intended appeal is frivolous and vexatious and that the appellants have not shown the prejudice they will suffer if the orders sought are not granted. That, the applicant has come to court with unclean hands and that security for costs has not been furnished by the appellants.

The respondent therefore prayed for the dismissal of the application with costs.

At the hearing of the application, the respondent and/or advocate failed to appear.

The applicant was represented by the learned counsel, **M/s. Arunga,** who relied on the supporting grounds and argued that the lower court ought not have applied contempt orders against the appellants as they were not served. That, the orders were extended on several occasions with the last extension date being 15th November, 2013. That, the relevant order was extracted by the respondent and purportedly served through the appellants' advocate offices by being pushed under the door after closure time (i.e. 5.00 p.m.) and despite the lower court being aware of the fact went ahead to rule that the appellants were aware of the material order as their advocate had been served.

Learned counsel further argued that the learned trial magistrate appeared to have been biased since she (learned counsel) was not a party to the suit and her office ought not have been served. That, the appellants were punished unjustly and upto date, the second appellant is in civil jail.

In contending that the material order ought to have been served upon the appellants and not their advocate, learned counsel relied on the decisions of the court in **Ochino & Another vs. Okombo & Others (1989) KLR 165 and Kariuki & Others vs. Ministry of Gender, Sports, Culture & Social Service & Others (2004) 1 KLR 588.**

Learned Counsel urged this court to allow the application and said that the second appellant is in civil jail for a period of ninety (90) days from 22nd July, 2014.

Having considered the foregoing submission in the light of the grounds in support of the application, it is apparent that what is addressed herein ought to be argued in furtherance of the appeal rather than the present application. This is because if this court were to address its mind as to whether the intended appeal is arguable and has high chances of success, then it would be dealing with the appeal proper rather than the application itself.

Consequently, the application maybe misconceived and/or already overtaken by events as the disputed court order is already effective such that there is nothing to stay at this juncture since the applicant is already serving term in a civil jail.

It is however, noted that the applicant has also applied for her release on bond pending the hearing and determination of the appeal.

Under Section 63 (e) of the Civil Procedure Act, a court may make interlocutory orders as may appear to be just and convenient.

Contempt of court is a matter which must be treated with the seriousness deserved. However, for a person to be held to be in contempt of a court order, he/she must be given an opportunity to be heard. He/she must show cause why punishment should not be meted out for disobedience of a court order. He/she must accordingly be notified of the order allegedly breached.

It is not for this court to determine at this juncture whether or not the applicant was aware of the order she allegedly breached. In as much as there is doubt regarding the issue, it would be fair and just for this court to order the release on bond of the applicant pending the hearing and determination of the appeal on condition that the applicant executes a personal bond of Ksh. 200,000/= with one surety of similar amount and that the intended appeal be prosecuted within a period of two (2) months from this date hereof and in default the release order be vacated forthwith. It is accordingly ordered and for the avoidance of doubt the order applies only to the applicant/second appellant.

[Read and signed this 1st day of October, 2014.]

J.R. KARANJA.

JUDGE.