



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

ELC NO. 6 OF 2013

MICHAEL NJUGUNA T/A

NJUAKIM COMMERCIAL AGENCIESPLAINTIFF

VERSUS

EQUITY BANK LTD.....DEFENDANT

RULING:

The Applicant herein filed an application dated 1/3/2013 seeking for **Injunctive Orders**. The said Notice of Motion was canvassed by Written Submissions and a Ruling was issued by this Court on 5/7/2013.

Subsequently, the applicant again filed a Notice of Motion dated 16th July, 2013 seeking for **Conditional Stay for 30 days of the Court's Ruling and Orders issued on 5/7/2013**. The said Notice of Motion was set for hearing on 24/7/2013. On 24/7/2013, the Court ordered parties to put in Written Submission and appear in Court on 9/8/2013, for further Orders.

But instead of putting in written submissions, the applicant filed the instant application dated 26/7/2013 and abandoned the earlier application dated 16/7/2013.

In the instant application, the applicant has sought for stay of execution of the Orders made by the Court on 5th July, 2013 pending the hearing and determination of an intended appeal. The applicant stated that, he has an arguable appeal and the application is made for the interest of justice and equity.

The application is opposed. The Respondent filed their grounds of opposition and averred that this Court has no jurisdiction to granting the Order of stay sought by the Applicant. That the Court did not issue any Order on 5/7/2013 and therefore, there exists no Order capable of being stayed. That further, there is no Notice of Appeal lodged to justify the Orders sought.

The applicant has sought to stay the Orders issued by the Court on 5/7/2013. On 5/7/2013, the Court found that, the applicant's Notice of Motion dated 1/3/2013 did not have merit and the same was dismissed. The Court dismissed the Notice of Motion and did not issue any Order capable of being stayed.

The applicant has not attached his Notice of intended appeal and thus, Court cannot find with certainty that, he has an arguable appeal. The applicant is asking the Court to grant what it had already dismissed. The applicant herein should have filed his Notice of Appeal with an application for Injunction at the Court of Appeal.

Though applicant filed a letter of undertaking, that he would pay about **Kshs.1.2 Million** by the end of the day today to the Respondent, he had all the time to make good that undertaking from 5/7/2013 to date. Instead he has been filing several applications in this Court instead of lodging an appeal. That amounts to abuse of the Court's process.

The Court finds that it has nothing to stay herein as the Court only dismissed an application on 5/7/2013 but did not make, or issue any Order capable of being stayed. Notice of Motion dated 26/7/2013 is hereby dismissed. Costs in the Cause.

Dated, Signed and delivered this 5TH day of **July, 2013.**

L N GACHERU

JUDGE

Okemwa for the Applicant

Wanjohi for the Respondent

Anne Court Clerk

Court:

Ruling Read in Chamber in the presence of **Mr Okemwa** for the Applicant and **Wanjohi** for the Respondent.

L .N. GACHERU

JUDGE