



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Appeal 144 of 2012

Editorial Summary

1. *Civil Appeal*
2. *Civil Practice & Procedure*
3. *Subject of Subordinate Court case*

EXECUTION PROCEEDINGS

- 3.1 *Appellant/applicant, Director of limited liability company.*
- 3.2 *Hon. Magistrate examines directions as to assist of company but makes director personally liable for debt.*
- 3.3 *Applicant appeals and applies by application 26th March 2011 for stay of execution.*
- 3.4 *High Court grants the application for stay of execution.*
- 3.5 *Issue of security of costs made condition to be deposited and paid within 30 days by applicant of Ksh. 200,000/- in an interest earning account in names of both advocate.*
- 3.6 *Issue of decretal sum. Whether security be placed?*

4. *Held:*

4.1 Security on the decretal sum would not be made
due to the circumstances of case before court.

5. Case Law:

6. Advocates :

- i) T.W. Gaita instructed by M/s Gaita Co Advocates for
appellant/original defendant
- ii) T.K. Mbaabu & M/s T.K. Kariba Mbaabu Co Advocates for
respondent /original defendant

BONAR (E.A) LIMITED APPELLANT/ORIGINAL DEFENDANT

STEPHEN REUBEN KARUNDITU

ELIUD NJOROGE APPELLANTS

VERSUS

ASHUT ENGINEERS LTD RESPONDENT/ ORIGINAL PLAINTIFF

*(Being an appeal against the ruling of Hon. A.K. Ndungu, Senior Principal Magistrate on 21st May of
2007 in CMCC No. 11381 of 2005 at*

Milimani Commercial Courts)

RULING NO. 3

I BACKGROUND

1.It is necessary to make further ruling in this matter.

2.On the 25th June 2012, this court granted an application for stay of execution against the appellant, a director of a company.

3.The original court case in the magistrate's court concerned execution proceedings amounting to a sum of Ksh. 4 million. The limited liability company failed to poay this sum as ordered by that court. The directors of the company were examined and were ordered to pay the sum due personally.

4.This High Court was asked to rule on the issue of security that should be provided. This was duly done and the court ordered that Ksh. 200,000/- be provided as security of costs.

5.The issue that now arises is whether further security on the decretal sum be provided?

II DECRETAL SUM

6.The applicant states that the issue of the appeal is whether a director should be made personal for the debt or not? This therefore implies that security for the decretal sum should not be asked for.

7.The respondent wished for a clarification of this. That the judgment debtor is part of the applicant's limited liability company. That he is a debtor and part of the appellant.

III FINDINGS

8.For purposes of clarification, the issue before this court on appeal is whether the director should be made liable for the debt of a limited company or not? The court herein, in its discretion, ordered security of costs of Ksh. 200,000/- be provided. It would therefore not make any further security to be provided for, due to the circumstances of the case.

9. The security of costs to be proved would be Ksh. 200,000/- paid within 30 days as of 11th July 2012.

10. The costs herein will be in the appeal.

DATED THIS 12th DAY OF JULY 2012 AT NAIROBI

M.A. ANG'AWA

JUDGE

Advocates :

- i) *T.W. Gaita instructed by M/s Gaita Co Advocates for
appellant/original defendant*
- ii) *T.K. Mbaabu & M/s T.K. Kariba Mbaabu Co Advocates for
respondent /original defendant*