

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CIVIL SUIT NO. 214 OF 2011

ALBERT CHULAH WAMIMITAIRE.....PLAINTIFF

-VERSUS-

HAKIKA TRANSPORT SERVICES LIMITED.....DEFENDANT

RULING

1. The defendant moved this Court vide its application dated 24th June 2016 seeking stay of execution of the judgement and decree issued by this Court on 8th October 2015. The purpose of the stay is so us not to render their appeal to the Court of Appeal nugatory. The defendant submits that it is ready to give appropriate security for the sums due under the decree through a deposit made in an escrow account in the names of the parties' advocates.
2. The application is opposed by the plaintiff/respondent who deposed that the applicant's application for leave to file Notice of Appeal out of time is still pending. The Respondent gave reasons why this application should not be granted in paragraph 17 (B) to wit that no Notice of Appeal against the judgement has been filed by the defendant/Applicant as alleged.
3. This is an application in which a consent ought to have been recorded after the Court of Appeal enlarged for the defendant/Applicant time within which to appeal vide its ruling delivered on 14th October 2016. I say so because going by the contents of the replying affidavit, and the submissions the only reason the Respondent opposed the application was because of the absence of an appeal against the judgement of this Court through a properly filed Notice of Appeal.
4. The three grounds upon which a Court is to consider whether or not to grant an order for stay of execution is laid out in Order 42 rule 6. These grounds have been highlighted in several case law such as the Court of Appeal decision in **Halal & Another vs Thornton & Turpin (1963) Ltd (1990) KLR** i.e. that the applicant must establish sufficient cause, secondly that the Court does satisfy itself that substantial loss would ensue from such a refusal and or that the applicant must furnish security.
5. In this instant, the decretal sum awarded is quite a reasonably big sum of money. The applicant submits that it may not be able to recover this money if it is paid out to the Respondent. In his replying affidavit, the plaintiff has not deposed that he is a man of means capable of refunding the decree in the event the appeal succeeds. Accordingly I am satisfied that the applicant has demonstrated that it may suffer substantial loss if the orders are not granted.
6. Further Order 42 of the Civil Procedure Rules only require a party to demonstrate that it has an appeal merely by presenting a valid notice of appeal. The applicant has a valid notice of appeal on record by virtue of the enlargement of time given to it by the Court of Appeal on 14th October 2016. Lastly the Applicant has expressed his readiness to furnish security by depositing the decretal sum in an escrow account thus showing readiness to abide by and fulfil the 3rd condition for granting stay.
7. Consequently looking at the facts presented in totality, I am satisfied that the application has merit. The applicant is hereby given an order staying the execution of the judgement and decree of this Court given on 8.10.15 and issued on 7th December 2015 pending hearing and determination of his appeal. I

further order the applicant to deposit the decretal sum of Kshs 2,770,000 together with the taxed costs in an interest earning account opened in the joint names of the Respondent & Applicant's advocate. The deposit be made within 30 days of the account being opened. The costs of this application do abide the outcome of the decision of the Court of Appeal.

Dated, signed and delivered at Mombasa 20th day of April 2017

A. OMOLLO

JUDGE