



IN THE COURT OF APPEAL

AT NAIROBI

CIVIL APPLICATION NO. 121 OF 2020

(CORAM: OKWENGU, JA (IN CHAMBERS))

OSEKO & OUMA ADVOCATES LLP.....APPLICANT

AND

SAMUEL GACHIE KAMITI.....RESPONDENT

(In the matter of an application for stay of execution pending the hearing and determination of the appeal from the Ruling and Order of the High Court of Kenya at Nairobi (Francis Tuiyot, J) dated 20th December, 2019

in

HCCC Case No. 64 of 2019

RULING

1. On 13th August, 2020 a notice of motion dated 5th August, 2020 was placed before me for certification under Rule 47 of the Court of Appeal Rules. The application involved a dispute between an advocate and his client. The applicant Oseko & Ouma Advocates, LLP were seeking *inter alia*, orders of stay of execution of the ruling and order dated 20th September, 2019 delivered by the High Court (**Tuiyot, J**) in HCCC No. 64 of 2019 (OS).
2. In its orders, the High Court referred the dispute between the applicant and the respondent (client) to arbitration, and directed that monies held in deposit by the applicant and all accrued interest be moved to a joint interest account in the joint names of the applicant and the respondent, and that the applicant do release his client file in HCCC No. 543 of 2010 to the firm of Kipkenda and Co. Advocates who were acting for the respondent.
3. Upon perusing the certificate of urgency and affidavits sworn in support of the urgency and in support of the motion, I declined to certify the motion as urgent. The applicant has now moved the Court by way of a letter dated 13th August 2020 for *inter parte* hearing and determination of the issue of urgency under Rule 47(5) of the Court of Appeal Rules.
4. Due to the Covid-19 pandemic, parties were directed to file written submissions upon which the matter is to be determined. Both the applicant and the respondent have filed written submissions which I have duly perused together with the application. In support of the urgency, the applicant has explained that there are arbitration proceedings that are ongoing, and that the execution of the order would effectively deprive it of its earned legal fees, extinguish its right of lien over the client file, and also result in penalties in accrued tax obligations. The respondent on its part has not addressed the issue of urgency but has focused on the merit of the applicant’s motion, which is not the subject of today’s hearing.
5. Given the peculiar nature of the order, subject of the intended application, and given that there are other proceedings going on that may impact those orders, I do hereby certify the notice of motion dated 5th August, 2020 as urgent and direct that the same be listed for hearing on priority.

Dated and delivered at Nairobi this 9th day of October, 2020.

HANNAH OKWENGU

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JUDGE OF APPEAL

*I certify that this is a true
copy of the original.*

Signed

DEPUTY REGISTRAR