



IN THE COURT OF APPEAL

AT NAIROBI

[CORAM: WARSAME, MUSINGA & SICHALE, J.J.A.]

CIVIL APPLICATION NAL 226 OF 2019

IN THE MATTER OF AN INTENDED APPEAL

BETWEEN

HALL EQUATORIAL LIMITED.....APPLICANT

AND

ABDUL RAHIM.....RESPONDENT

(An application to stay the ruling of the Employment and Labour Relations Court at Nairobi (H. Wasilwa, J.) dated 21st May, 2019

in

Cause No. 1332 of 2013

RULING OF THE COURT

The applicant, **Hall Equatorial Limited**, moved this Court under **Rule 5(2)(b)** seeking an order, in the main, to stay the ruling of **Wasilwa, J** of the Employment & Labour Relations Court (ELRC) dated **21st May, 2019** granting stay of her judgment delivered on **16th February, 2018**. In the said judgment, the applicant was ordered to pay a total sum of Kshs 4,629, 955.00 to the respondent. In the ruling of **21st May, 2019**, the court directed that half of the decretal amount be paid to the respondent and the other half be deposited in a joint interest account held by the advocates on record within sixty (60) days of the ruling. The applicant is aggrieved by the order to have half the decretal sum paid to the respondent, hence in the notice of appeal dated **24th May, 2019**, one of the grounds the applicant intends to urge on appeal is whether the conditional stay is inimical to the conditions for the grant of stay as set out in order 42 Rule 6 of the Civil Procedure Rules.

On the nugatory aspect, the applicant contends that the trial court failed to consider whether the respondent will be able to refund the sum paid to him, should the appeal be successful.

In a replying affidavit dated **6th December, 2019**, the respondent rehashed the background leading to the applicant's motion. He also pointed out that he had filed an application No. 286 of 2019 to strike out the Notice of Appeal on the basis that the Notice of Appeal was served outside the stipulated period. The said application is yet to be heard/determined.

The principles to be considered in a 5(2)(b) application are now well settled (see **Stanley Kang'ethe Kinyanjui vs. Tony Keter & 5 Others [2013] eKLR**). In the instant matter, the applicant intends to challenge the conditional order of stay on the basis that it is inimical to the provisions of the law. In our view, that ground, which at this stage we are not called upon to make full determination lest we embarrass the court that will be seized of the matter, is arguable.

On the nugatory aspect, the applicant has deponed that the appeal will be rendered nugatory should half the sum of the decretal be paid to the respondent, as he has no ability to repay the money. In the unnecessarily lengthy affidavit of the respondent, he does not demonstrate his ability to repay. If anything, he opposes the motion on the basis that he is enduring hardship on account of loss of employment. In our view, the nugatory aspect has also been satisfied.

Accordingly, we grant the order of stay as prayed. The one-half of the decretal sum which the applicant has no issue with shall be deposited in a joint interest earning account in the names of the advocates on record as directed by the ELRC court. The costs of the motion shall be in the intended appeal.

It is so ordered.

Dated and Delivered at Nairobi this 20th day of November, 2020

M. WARSAME

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JUDGE OF APPEAL

D.K. MUSINGA

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JUDGE OF APPEAL

F. SICHALE

.....

JUDGE OF APPEAL

I certify that this is a true

copy of the original.

Signed

DEPUTY REGISTRAR