



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT MOMBASA**

**CIVIL APPEAL NO 14B OF 2020**

**STEEL MAKERS LIMITED.....APPELLANT**

**VS**

**JOSEPH VINCENT TUJI.....RESPONDENT**

*(Appeal from the Judgment of Hon. Lesootia A. Saitabu, PM*

*delivered on 3<sup>rd</sup> June 2020 in Mombasa CM-ELRC No 466 of 2018)*

**RULING**

1. By its Notice of Motion application dated and filed in court on 3<sup>rd</sup> December 2020, the Appellant seeks stay of execution of the judgment and decree issued in ***Mombasa CM-ELRC No 466 of 2018: Joseph Tuji v Steel Makers Limited.***

2. The application is supported by the affidavit of the Appellant's Group General Manager, Johnson Samuel Vasant and is based on the following grounds:

- a) That the trial court delivered the judgment, the subject matter of the appeal, on 3<sup>rd</sup> June 2020;
- b) That being dissatisfied with the said judgment, the Appellant filed an appeal on 8<sup>th</sup> June 2020;
- c) That notwithstanding the filing of the appeal, the Respondent, on 18<sup>th</sup> November 2020, sent Messrs Sure Auctioneers to attach the Appellant's goods in execution of the judgment and decree issued by the trial court and the goods are due to be removed for auction unless a stay of execution is granted;
- d) That unless a stay of execution pending the hearing and determination of the Appellant's appeal is granted, the appeal shall be rendered nugatory;
- e) That unless a stay of execution pending the hearing and determination of the appeal is granted, substantial loss may occur to the Appellant;
- f) That the Appellant is willing to deposit any security as the Court may deem fit to impose.

3. The Respondent's response to the application is contained in a replying affidavit sworn by his Counsel, Clemence Masinde on 6<sup>th</sup> December 2020.

4. Counsel asks the Court to dismiss the Appellant's application for reasons that:

- a) The Appellant is engaging in delay tactics to deny the Respondent the right to enjoy the fruits of his judgment;
- b) The application is tainted with bad faith and is a mere afterthought meant to delay the matter as the Appellant is yet to file and serve the appeal, despite lodging a Memorandum of Appeal on 8<sup>th</sup> June 2020;
- c) The Appellant has not explained to the Court why the appeal is not yet filed and served upon the Respondent; Counsel notes that there is no request for typed proceedings on record.

5. Counsel for the Respondent states that the Appellant should be compelled to deposit the entire decretal sum in a joint interest earning account together with auctioneer's fees, pending the hearing and determination of the appeal.

6. This is a straightforward application that ought to have been compromised by the parties. Indeed, in the replying affidavit sworn by the Respondent's Counsel, there is concession to a conditional stay of execution.

7. The only point of departure is with regard to the form of security to be offered by the Appellant. On its part, the Appellant offers a log book for its motor vehicle registration number KAS 004M. On the other hand, the Respondent asks that the entire decretal sum be deposited in a joint interest earning account.

8. In an application for stay of execution pending appeal, the Court is called upon to balance the right of appeal against the right of the successful party to realise judgment.

9. The Appellant states that it is undergoing financial difficulties. Assuming this is true, the question to ask is what guarantee there is that it will be able to satisfy the award in case it loses on appeal. To my mind, a motor vehicle being a fast depreciating asset, does not offer any such guarantee.

10. In the circumstances, I agree with the Respondent's Counsel and therefore grant a conditional stay of execution, subject to the Appellant depositing the entire decretal sum in an interest earning account in the joint names of the parties' Advocates within the next thirty (30) days from the date of this ruling.

11. Failure to comply with the condition of stay will lead to an automatic lapse of the stay.

12. The costs of this application will be costs in the appeal.

13. Orders accordingly.

**DATED SIGNED AND DELIVERED AT MOMBASA THIS 11<sup>TH</sup> DAY OF FEBRUARY 2021**

**LINNET NDOLO**

**JUDGE**

**ORDER**

In view of restrictions in physical court operations occasioned by the COVID-19 Pandemic, this ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of court fees.

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Omollo for the Appellant

Miss Masinde for the Respondent