

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CAUSE NO. 94 OF 2018

GLADYS WAMBUI MWAL.....CLAIMANT/ RESPONDENT

VERSUS

HIGHLAND PLANTS LIMITED.....RESPONDENT/APPLICANT

RULING

1. The Respondent/Applicant herein seeks through the Notice of Motion Application dated 2nd December 2019 for stay pending the intended appeal. A notice of appeal was lodged on 28th November 2019 against the decision of the court made on 13th November 2019 though stamped 26th November 2019. This is 5 days past the date for lodging it. Be that as it may, the Respondent/Applicant presented the same to the Court of Appeal Registry and a letter seeking the proceedings presented on 26th November 2019. The Respondent/Applicant thus seeks a grant of the orders of stay and indicated in its oral arguments that there would be prejudice suffered if the execution were to proceed as it would render the intended appeal nugatory.

2. The Claimant/Respondent is opposed and filed a replying affidavit in which she deponed that the Respondent/Applicant had not attached a draft memorandum of appeal to set out the grounds on which it intends to appeal the decision of the court. Further, she asserts there is no offer of security as required. She thus sought the decretal sum be deposited in a joint interest earning account should the Respondent/Applicant be granted stay. She deponed the application had been brought under the wrong provisions of the law, to wit the Children's Act Section 4(2). The Claimant/Respondent thus urged the dismissal of the motion.

3. The principles guiding the grant of a stay of execution pending appeal are well settled. These principles are provided under Order 42 Rule 6(2) of the Civil Procedure Rules under which the court has to be satisfied that substantial loss may result to the applicant unless the order is made; that the application has been made without unreasonable delay; and that such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant. In **Vishram Ravji Halai v Thornton & Turpin [1990] KLR 365**, the Court of Appeal held that whereas the Court of Appeal's power to grant a stay pending appeal is unfettered, the High Court's jurisdiction to do so under Order 41 rule 6 is fettered by three conditions namely, establishment of a sufficient cause, satisfaction of substantial loss and the furnishing of security. Further, the application must be made without unreasonable delay. In this case no security was furnished and Mr. Muthee for the Respondent/Applicant offered security of an irrevocable bank guarantee from the bar. Secondly, but most importantly, there is no sufficient cause shown as there are no grounds which were presented to suggest there is grounds for grant of the motion. As there was no proof of the viability of an appeal as proposed there would be nothing to guide the court without a draft memorandum of appeal. In this case there is woeful lack of reasons for granting the stay sought by the Respondent/Applicant. The motion is not fit for grant and is declined, costs to the Claimant/Respondent.

It is so ordered.

Dated and delivered at Nyeri this 11th day of December 2019

Nzioki wa Makau

JUDGE