



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 562'B' OF 2017**

**(Before Hon. Justice Hellen S. Wasilwa on 23<sup>rd</sup> July, 2018)**

**TIMOTHY GRAEME STEEL.....CLAIMANT**

**-VERSUS-**

**TNT EXPRESS WORLDWIDE (KENYA) LIMITED.....RESPONDENT**

**RULING**

1. The Application before Court is dated 4/6/2018 seeking stay of execution of this Court's orders made on 18/5/2018 directing the Respondent to deposit 100,000 US Dollars in Court.
2. The Respondent/Applicant aver that they have filed an appeal, which would be rendered nugatory unless orders sought are granted. The Applicants aver that the alleged acquisition of the Application is not true as Applicants are still in Kenya and in existence. They indicated that they have a lease of 6 years, which will end in 2023.
3. The Claimants opposed this Application through their Replying Affidavit sworn on 12/6/2018. They submitted that the Applicants have not satisfied the grounds for grant of stay as provided under Order 42 rule 6(2) of the Civil Procedure Rules. They aver that the Applicants have not demonstrated the substantial loss they stand to suffer.
4. The Respondent averred that the 10 million ordered by Court to be deposited is substantial and the Applicant will suffer loss if the order is not granted.
5. I have considered the averments of both parties.
6. Under Order 42 rule 6(2):

**“(2) No order for stay of execution shall be made under subrule (1) unless:**

**a. the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and**

**b. 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”.**

7. Thus the Court will be guided by the 3 limbs above in determining whether or not to grant stay orders. The Applicants came to Court without undue delay. They have also indicated that 10 million is a substantial amount which they stand to lose if the appeal is allowed. Whereas the 10 million is substantial, the Applicants have not demonstrated that the Claimant is a man of straw and they cannot recover this amount if the appeal is allowed.
8. However, under Order 42 rule 6, this Court can exercise its discretion and grant the orders sought. I will therefore exercise my discretion and allow the application staying this Court's orders of 4/6/2018 in order to allow the Court of Appeal determine the merits or otherwise of the said orders.
9. I will however exercise my discretion on condition that 50,000 USD be deposited in joint names of Counsels on record as earlier directed within 30 days. In default execution to issue.

**Dated and delivered in open Court this 23<sup>rd</sup> day of July, 2018.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Ms. Rahidi holding brief for Mr. Kotonya for Applicants – Present

Respondent – Absent