



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**ELRC NO. 2309 OF 2014**

**(Before Hon. Lady Justice Hellen S. Wasilwa on 20<sup>th</sup> December, 2018)**

**KENNEDY KIMAIYO KIPLAGAT.....CLAIMANT/RESPONDENT**

**VERSUS**

**THE CO-OPERATIVE BANK OF KENYA LIMITED.....RESPONDENT/APPLICANT**

**RULING**

1. The Application before Court is the Notice of Motion Application filed by the Applicant/Respondent under Section 10 of the Judicature Act, Rules 3(1) and (2) of the Vacation Rules of High Court Practice and Procedure Rules, Section 3A, 53 and 65 of the Civil Procedure Act, Chapter 4 Laws of Kenya, Order 42 Rule 6(2), Order 51 Rule 1 of the Civil Procedure Rules, 2010 and any other enabling provisions of the law.

2. The Applicant seeks stay of execution of the judgement and decree of Judge D.K Marete delivered by J. Onyango Maureen in this suit on 26.7.2018 pending the hearing and determination of the intended Appeal from the said judgement and decree.

3. The Applicants contend that they have an arguable appeal and stand to suffer substantial loss and irreparable damage if the Court does not grant orders of stay as sought. They also aver that the Claimant will suffer no prejudice if the stay is granted. They contend that the appeal will also be rendered nugatory if the orders are not granted.

4. The Application is supported by the Supporting Affidavit of one Florence Njuguna the Respondent's Legal Manager herein.

5. The Respondents opposed this application. They filed their Grounds of Opposition.

6. I note that Hon. J. Ongaya had issued orders that the stay orders be granted on condition that the Respondent/Applicant deposits the entire decretal sum in an interest earning account by 20.9.2018. The Respondent told Court that they had complied with the said orders.

7. It is my view that due to the said order, the issue of stay was determined by the Hon. J. Ongaya and I will confirm the same. The stay will therefore pend pending the hearing and determination of the appeal filed by the Respondent/Applicants.

8. Costs to abide the outcome of the appeal

**Dated and delivered in open Court this 20<sup>th</sup> day of December, 2018.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of**

Miss Mbogo holding brief Gachuba for Claimant

Bor holding brief Muthee for Respondent/Applicant