



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 233 OF 2014

HARRIET K. MUTESHI.....

CLAIMANT

VERSUS

ORTHODOX DEVELOPMENT SAVINGS AND CREDIT SOCIETY LIMITED.

.....RESPONDENT

RULING

1. By an application dated 30th November, 2015 the respondent sought an order of stay of execution pending the hearing and determination of the intended appeal.
2. The application was supported by the affidavit of Patrick Iraro who deponed that the claimant's lawyer had threatened to proceed with execution and if that proceeded the intended appeal would be rendered nugatory. He further stated that the respondent was willing to deposit the decretal sum in Court as security for the judgment.
3. The applicant did not attach a draft memorandum of appeal to at least demonstrate to the Court the chances of success of the intended appeal.
4. Consideration for grant of stay of execution are substantially contained in Order 42 of rule 6 of the Civil procedure Rules. The order provides (in paraphrase):-
 - a. No order for stay of execution shall be made under sub rule (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.
5. The applicant has averred that it will suffer irreparable loss and if the goods proclaimed are carried away by the auctioneer in execution of the decree of this Court. On the other hand the applicant has offered to deposit the decretal sum in Court pending the outcome of the intended appeal.
6. The decree of this Court was for Kshs.506,251/=. This is the amount the respondent is prepared to deposit in Court pending the outcome of the intended appeal. The respondent is only concerned that if its

property proclaimed is carried away it will suffer irreparable loss. It does not allege that if the decretal sum is paid over to the claimant it would be impossible to recover the same if the appeal succeeds.

7. The Court is not very impressed with the grounds upon which the application is brought but will nonetheless order a stay of execution on condition that the decretal sum be deposited in Court within fourteen days from today's date and so remain deposited pending the hearing and determination of the intended appeal. In default execution to proceed.

8. It is so ordered.

Dated at Nairobi this 19th day of February 2016

Abuodha J. N.

Judge

Delivered this 19th day of February 2016

In the presence of:-

.....**for the Claimant and**

.....**for the Respondent.**

Abuodha J. N.

Judge