



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT MOMBASA
CIVIL APPEAL NUMBER 3 OF 2014

BETWEEN

HUNTERS SHIP CHANDLERS & GENERAL CONTRACTORS APPELLANT

AND

FRANCIS OCHUMBO MBUYA RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Mr. Owino Advocate instructed by Angelo Owino & Company Advocates for the Appellant

Ms. Osino Advocate instructed by P.A. Osino & Company Advocates for the Respondent

RULING

The Appellant, through an Application filed on 13th October 2014 at the High Court in Mombasa, seeks an order for Stay of Execution.

The file was transferred to the Industrial Court by the High Court on 5th November 2014.

Judgment in the Lower Court was read on 5th February 2013 for the principal amount of Kshs.80,000, costs and interest in favour of the Respondent against the Appellant.

It is not clear from the Appellant's papers, which particular Officer read the Judgment. Paragraph 2 of the Supporting Affidavit sworn on 13th October 2014 indicates Judgment was delivered before PM M.K. Mwangi. The Memorandum of Appeal refers to the Judgment and Decree of Hon. J. Gandani. The Proceedings and Judgment of the Court below, are not available in the Appellant's papers.

The Advocates agreed to have the Application for Stay of Execution disposed of by way of written submissions.

Upon a careful examination of the Application, Affidavits and Submissions filed by the Parties, the Court *Finds and Orders:-*

1. Judgment was entered in favour of the Respondent against the Appellant for the Principal Sum of Kshs.80,000, costs and Interest.
2. The Respondent submits he is gainfully employed as a Casual Labourer, earning Kshs.20,000

per month and would not fail to refund the Appellant the decretal sum, if the Appeal succeeds.

3. The Court has not seen any material from the Appellant, to discount the Respondent's ability to repay the decretal sums in event the Appeal succeeds.

4. There are only 3 grounds in the Draft Memorandum of Appeal. Those grounds appear to this Court, in the absence of the Lower Court's Proceedings, very weak grounds. There are no recondite matters of law, or weighty matters of fact revealed in the sketchy Memorandum of Appeal, as to enable this Court say there is an arguable Appeal.

IT IS ORDERED:-

(a) Stay of Execution is refused

(b) The interim stay of execution given at the High Court is lifted, and the Respondent placed at liberty to execute.

(c) Costs in the Appeal.

Dated and delivered at Mombasa this 12th day of February 2015.

James Rika

Judge