

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT MOMBASA

CAUSE NO. 180 OF 2013

JULIUS NGANGA MBUGUACLAIMANT

VERSUS

RAFIKI DTM [K] LTDRESPONDENT

RULING

The responded has filed a Notice of Motion dated 25/10/2013 basically seeking for stay of execution of this courts judgment dated 27/9/2013 and the decree issued on 9/10/13 pending hearing and determination of appeal. The Motion is supported by the affidavit of Onesmus Kamau the applicant's Mombasa Branch Manager. The grounds for Motion are that the appellant will be subjected to substantial losses and hardship if the stay is denied and that her appeal which has good chances of success will be rendered nugatory.

The claimant has opposed the Motion by his own affidavit and grounds of opposition dated 8/11/2013. The gist of the reply is that the judgment was correctly entered and that being a money decree stay of execution is not merited. In addition the claimant contended that he is well able to refund the decretal sum in the unlikely event that the appeal succeeds. In the alternative, the claimant is ready to have the decretal sum deposited in court or in a joint interest earning bank account.

The Motion was canvassed by way of written submission. The last paragraph of the submissions by the claimants counsel states that the most appropriate order the court should make herein is to direct that the decretal sum be deposited in an interest earning account for the benefit of the successful party in the appeal.

The court will not go to the analysis of the arguments raised. The purposes of the court is to do justice. The claimant is ready to stop execution of the decretal sum is securely kept for him to guarantee performance in event the appeal fails. Likewise by ground number 11 of the Motion the applicant has undertaken to willingly abide by the decision of the court on the Motion. In view of the foregoing observations the court allows the Motion on condition that the whole decretal sum is deposited in an interest earning account in a reputable bank to be jointly held by the two law firms representing the parties to the suit . For avoidance of doubt the respondent is excluded from the banks to be chosen by the parties.

DISPOSITION

For the reasons stated above the court grants stay of execution to the applicant pending appeal upon the following conditions:

- 1. the applicant shall within 21 deposit the whole decretal sum into a joint interest earning account to be held by the two law firms representing the parties herein.**
- 2. In default of compliance with this order by the applicant, the stay order shall lapse after 21 days thereof and execution may proceed.**
- 3. No orders as to costs.**

Signed, dated and delivered this 24th day of February 2014.

O. N. Makau

Judge