

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT KISUMU

CAUSE NO. 19'A/2013

(Before Hon. Justice Hellen Wasilwa on 17th June, 2014)

MAURINE ACHIENG CLAIMANT

-VERSUS-

SATISH K. SHAH RESPONDENTS

R U L I N G

The application before court is the one dated 9.4.2013. It was filed by the respondent applicants herein who seek orders for stay of execution pending hearing and determination of the appeal they have preferred. The applicants have brought this application under S. 3A of the CPA Cap 21 Laws of Kenya and High Court (Practice & Procedure) Rules 1, 2 & 3 of the Judicature Act Chapter 8 Laws of Kenya and all enabling Provisions of the Law. It is the applicants contention that they are dissatisfied with the judgment of this court and have preferred an appeal before the Court of Appeal. They fear that the respondent may execute the judgment against them if the stay is not granted. The application is supported by the supporting affidavit of **Godfrey Nathan Kitiwa** and they ask the court to allow the application.

The respondent opposed this application. She filed her grounds of opposition in person dated 28th April 2014 and it is her contention that the application lacks merit and is an afterthought. Order 42 rule 6(2) of the Civil Procedure Rules provides that:-

“No order of 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 ---”

The test then is whether to grant the prayers sought as provided for under the above order. This order sought is discretionary exercise and in exercising my discretion, and there being proof that the applicants have filed a Notice of Appeal, I allow the application on the condition that the applicants deposits the entire decretal sum in a joint interest earning account held in the names of the applicant/applicants counsel and respondent within 30 days. In default execution to proceed.

HELLEN WASILWA

JUDGE

17/6/2014

Appearances:-

Lusweti for respondent claimants present

Busienei h/b Chepkwony for respondent present

CC. Wamache