



**REPUBLIC OF KENYA**

**Industrial Court of Kenya**

**Cause 873 of 2011**

**JEREMIAH WACHIRA ICHAURA.....CLAIMANT**

**VERSUS**

**DIRECTLINE ASSURANCE LTD.....RESPONDENT**

**RULING**

This is an application by Notice of Motion dated 20th December 2012 commenced by Certificate of Urgency by the Respondent herein for orders stay of execution of the Court Award given on 13th December 2013. The application is supported by the Affidavit of Terry Wijenje, the Managing Director of the Respondent/applicant. The Claimant in response filed the Replying Affidavit dated 16th January 2013.

The application before Court is on the grounds that upon delivery of the Court Award on 13th December 2012 the Respondent is desirous of prosecuting an appeal and a Notice of Appeal was filed dated 19th December 2012 and files the following day. That the respondent applied for typed proceedings for purposes of lodging the appeal to challenged the Court orders awarding the Claimant the sum of Kshs.6,440,000/= as damages. That the Respondent has a good appeal with high chances of success and if a stay of the Court Awards not stayed it will be rendered nugatory. That the Claimant is likely to proceed with execution against the respondent before the appeal is heard and thus will suffer substantial loss as claimant is unemployed and unlikely to refund the decretal amount if the appeal succeeds.

That the Respondent is willing to give any security that the Court directs for the due performance of the decree.

The applicant further submitted that they have come to court without any delays as immediately the Court read the Award they proceeded to apply for proceeding and filed a Notice of Appeal and have submitted this application for stay before the lapse of the 30 days stay given by court. That in evidence the Claimant stated that he was unemployed and will thus not be able to make good the payment if the appeal succeeds and there is no evidence of any investments that can be given as security in the event the appeal is successful. That the Applicant is a large investment company and has the ability to give security in the event they do not succeed on appeal.

I response the Claimant submitted that the termination took place in 2008 and any further delay in accessing fruits of his judgment is denial of justice. That the Respondent is an insurance company that covers public service vehicles and in the recent past they have been going under thus there is no security guarantee unless 50% of the judgment amount is released to the claimant and the balance be deposited in a joint account of both advocates. That the fact that the Claimant is not employed is not an act of destitution since he had worked in several other institutions and was able to investment and can make good the claim is appeal succeeds.

I note that the main purpose of an application for stay of execution pending appeal is to preserve the subject matter in dispute so that the right of the appellant who is exercising his undoubted rights of appeal is safeguarded and the appeal if successful is not rendered ineffective. The order for a cash deposit against the intended appellant is more geared towards ensuring that an appellant takes steps to have their appeal heard and determined without undue delays since he is denied the use of the money but not in any way to deny a successful litigant of the fruits of his litigation and locking up funds to which on the face of the record he is entitled. So long as the opposite party can be adequately protected, it is right and proper that security should be given in a way which is the least disadvantageous to the party giving the security.

I note that respondent has filed Notice of Appeal as attached to the affidavit in support of their application and the draft memorandum of appeal. There are issues of law that the Court of Appeal will determine and without going into the merits of the intended appeal, I note the respondent will suffer loss if the money is paid before the intended appeal is argued and determined.

It is admitted by both parties that the claimant is unemployed and even though he may have invested, there is no evidence as to the nature of his investments thus there is potential loss that will arise to the respondent if a stay is not granted pending the hearing and determination of their intended appeal.

I however note that what is before Court is a Notice of Appeal and no draft Memorandum of Appeal and to ensure that this is not an effort to frustrate the claimant who already has a judgement of this Court and that the respondent takes steps towards having their appeal filed, heard and determined, this Court will grant a conditional stay. It is right and proper that security be given in a way which is least disadvantageous to the respondent but ensure the claimant is adequately protected.

I therefore direct that there be a deposit of 50% of the decretal sum in a joint bank account in the names of both advocates for the parties herein the firms of LJA Associates Advocates and Waiganjo Wachira & Company Advocates.

Costs in the motion.

**Dated and Delivered at Nairobi this 25th day of February, 2013.**

**M. Mbaru**

Judge Industrial Court

In the presence of:  
Court clerk

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