

REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 369 of 2012

ANTONY WANDETO MWANGICLAIMANT

VERSUS

AGBA MOTORS LIMITED..... RESPONDENT

RULING

The Respondent AGBA Motors Limited filed on 9th November, 2012 the Notice of Motion under Section 17 of the Industrial Court Act No. 20 of 2011, Rule 16(1), (2) and (5) of the Industrial Court (Procedure) Rules, 2010 and all enabling provisions of law. The application is seeking orders that the court grants a stay of execution of the award in Cause No.369 of 2012 pending hearing and determination of appeal against the award made by the court on 26th October, 2012. The application is also seeking orders on costs and such further and other relief as the court may deem fit and expedient in the circumstances.

The application is supported by the affidavit of Patricia Khisa and Benard Ngugi annexed on the application.

The claimant filed on 19th November 2012 his replying affidavit to oppose the application. The claimant at paragraph 6 of the affidavit stated that the appeal is not arguable and it is meant to deny and delay justice. That at all material time during the hearing the Respondent's witnesses were heard and, according to the claimant, it was misleading for the Respondent to allege that its witnesses were not available at the hearing.

It was submitted for the Respondent that the appeal will be rendered nugatory if execution proceeded because if the appeal were to succeed, the claimant will not be able to refund the decretal sum. Further that the Respondent was able and willing to give as security the decretal amount by depositing the same in an interest earning account or as may be ordered by the court.

The court has considered the interests of the parties in this application and the willingness of the Respondent to deposit in court the decretal sum. In the circumstances of the case, the court makes the following orders:

- (a) The Respondent to deposit in court a sum of Ksh.360,000/=, as awarded, by 7th December, 2012 when the case will be mentioned to confirm the deposit.
- (b) The amount of money deposited in court shall be released to the claimant on 1st February, 2012 if the Respondent shall not have filed the appeal by that date.
- (c) There shall be stay of execution pending the hearing and determination of the appeal but subject to order (b) above.
- (d) Costs of this application shall follow the outcome of the appeal.

Signed, dated and delivered at Nairobi this 30th day of November, 2012.

Byram Ongaya
JUDGE