



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL CASE NO. 467 OF 2000**

**JESSE KAMAU GACHANJA.....PLAINTIFF**

**VERSUS**

**BARCLAYS BANK OF KENYA.....DEFENDANT**

**RULING**

The Notice of Motion dated 24/6/2010 is brought pursuant to **Order 41 Rule 4, 50** of the **Civil Procedure Rules** and **Section 3A** of the **Civil Procedure Act**. It is brought by the defendant/applicant, Barclays Bank of Kenya, in which it seeks stay of execution of the decree arising from the court's judgment dated 13/5/2010, pending determination of the intended appeal,.

The plaintiff had sued the defendant for wrongful termination of his services and on 13/5/2010, this court entered judgment in favour of the plaintiff for Kshs.3,075,912.25 plus interest at 12% from the date of filing suit in 2000 and costs. The applicant is aggrieved by that decision and is apprehensive that if stay is not granted, it is likely to suffer substantial loss since the plaintiff/respondent has no formal employment or assets and he may not be able to refund the decretal sums in the event the appeal succeeds. Mr. Imende, counsel for the applicant urged that the applicant is ready and willing to deposit the decretal sum in an interest earning account in the joint names of the advocates. It was also urged that the respondent's financial capacity is in question since he owes the applicant several loans and that all the documents he has exhibited are charged to banks.

The plaintiff/respondent in his replying affidavit urged the court not to stay the execution but allow him to enjoy the fruits of his judgment or in the alternative, the applicant be ordered to pay him at least ½ of the decretal sum. He deposed that he was advanced monies when still in the employment of the applicant which was unlawfully terminated. He deposed that in any event, the Bank still holds substantial securities in the form of legal charges over Naivasha Town Block 1/516 (Kihoto) and

Naivasha/Mwichiringiri Block 4/3613 valued at about 3 million and 1.2 million respectively yet he owes the Bank only about 1 million. In addition, the plaintiff/respondent owns Naivasha/Mwichiringiri Block 4/4087 which had been charged to Equity Bank but has been discharged and Naivasha/Maraigushu Block 11/321 (Karai) worth Kshs.900,000/- and 2 million respectively (JKG 1a, 1b, 1c, 1d). The respondent urged that he is a man of means and able to refund the applicant in the event the appeal succeeds.

The only issue that the court has been called upon to adjudicate is whether the court should order the decretal sum to be deposited in an interest earning account or part of it be released to the plaintiff/respondent. Judgment was entered against the defendant/applicant on 13/5/2010 and a notice of appeal was filed on 25/5/2010. This Notice of Motion seeking stay was filed on 8/7/2010. I find that the applicant moved with speed to challenge the decision of this court. The applicant is keen on appealing against the judgment of the court.

It is not disputed that the respondent still owes the defendant some money which is secured by two charges to the respondent's property. It is not clear exactly how much of the loan is still outstanding but the respondent put it at 1 million. It is therefore less than the judgment sum. The question then is whether the respondent is capable of refunding the decretal sum in the event the appeal succeeds. I have looked at the other titles to property which the respondent owns, Naivasha/Mwichiringiri Block 4/4087 Ex. 1B. The search certificate shows that it was charged to Equity Bank on 24/11/08 for a loan of Kshs.175,000/-. Though the respondent claimed that it is discharged, there is no evidence to that effect. Similarly, Block 11/321 (Karai) (JKG) is charged to the Kenya Industrial Estates from 16/2/07. The search was done on 21/10/2010 and there is no evidence that it has been discharged. respondent/plaintiff has not demonstrated that he has any gainful employment or any other means by which he can repay the defendant/applicant if the decretal sums are paid to him. Whereas the plaintiff/respondent wishes to enjoy the fruits of his judgment, the defendant also wishes to exercise its right of appeal and the court has to balance the interests of both parties. In my view, I find that the respondent has not demonstrated how he can refund the decretal sum if paid to him and I will grant an order of stay on condition that the applicant deposits the full decretal sum in an interest earning account of both advocates for the plaintiff/respondent and defendant/applicant within 7 days hereof. This court appreciates that this is an old matter filed in 2001 and the defendant/applicant should speed up the preparation of the record of appeal to be completed and ready for admission within 3 months. Costs to be in the cause.

**DATED and DELIVERED this 14<sup>th</sup> day of December, 2010.**

**R.P.V. WENDOH**

**JUDGE**

**PRESENT:**

Mr. Mugweru for the plaintiff/respondent.

Kennedy – Court Clerk.



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