



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CIVIL APPEAL NO. 124 OF 2015**  
**FRANCIS KARARI MUNGAI.....APPELLANT**  
**V E R S U S –**  
**TKN TRAVELLERS SAVINGS AND CREDIT**  
**CO-OPERATIVE SOCIETY LIMITED.....RESPONDENT**

*(Being an appeal from the ruling of the Chairman of the Co-operative Tribunal delivered  
on the 19<sup>th</sup> March, 2015 at the Co-operative Tribunal Cause No. 425 of 2012)*

**RULING**

1. Francis Karari Mungai, the Appellant herein took out the motion dated 9<sup>th</sup> April 2015 in which he sought for inter-alia:

***THAT upon hearing this application inter-partes, this honourable court be pleased to order a stay of execution of the Co-operative Tribunal's ruling dated 19<sup>th</sup> March, 2015 delivered in Co-operative Tribunal No. 425 of 2013 until the hearing and determination of the applicant's intended appeal.***

2. The aforesaid motion is supported by the affidavit of the Appellant sworn on 7<sup>th</sup> April 2015. TKN Travellers Sacco Ltd, the Respondent filed the replying affidavit of John Bosco Waweru Mwangi to oppose the motion. When the motion came up for interpartes hearing, learned counsels appearing in the matter recorded a consent order to have the motion disposed of by written submissions. I have considered the grounds set out on the face of the motion plus the facts deponed in the replying and supporting affidavits. I have further taken into account the rival written submissions.

3. It is the submission of the Appellant that he filed his appeal within the stipulated time. This court was informed that if the order for stay of execution is not granted the appeal will be rendered nugatory and the applicant will stand to suffer injustice and financial loss. It was pointed out that the Respondent may execute the decision of the Cooperative Tribunal thus causing a colossal financial loss.

4. The Respondent on the other hand is of the view that the appeal has no chances of success. It pointed out that the Appellant filed a defence which contained mere denials which prompted the Cooperative Tribunal to strike out the defence and enter summary judgement. It is also argued that the Appellant did not appeal against the surcharge order. It is the Respondent's submission that no decree has been served

against the Appellant and it is hearsay that the Respondent might execute the ruling any time. The Respondent further argued that the Appellant has failed to make an effort to procure the preparation of the decree and proceedings. It's the Respondents view that the applicant has failed appreciate that litigation must come to an end. The Appellant has been accused of using this application and the appeal to delay the conclusion of the matter.

5. It would appear from the pleadings and the affidavits filed herein that the Cooperative Tribunal struck out the Appellant's defence and entered summary judgment against the Appellant. The Appellant is now before this court seeking for the aforesaid order to be set aside on appeal so that his defence is reinstated and he be heard. However, the Appellant has urged this court to stay the execution of the Cooperative Tribunal's decision pending appeal.

6. The grounds to be considered in such an application are well settled. First, an applicant must show that unless the order for stay is given he is likely to suffer substantial loss. It is not in dispute that there is nothing at the moment which prevents the Respondent from executing the decree against the Appellant. If the decree is executed, the Appellant will be forced to pay the colossal amount which may be difficult to source for within a short period. That in my view amounts to a substantial loss.

7. The second principle to be considered is whether or not the application for stay of execution was timeously filed. There is no dispute that the motion was timeously filed.

8. The third issue to be considered is the provision for security for the due performance of the decree. In the circumstances of this case, I do not think it is appropriate at this stage to order the Appellant to provide security.

9. In the end I find the motion dated 9.4.2014 to be well founded.

The same is allowed in terms of prayer 4 with costs abiding the outcome of the appeal.

Dated, Signed and Delivered in open court this 13<sup>th</sup> day of May, 2016

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Appellant

..... for the Respondent