

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL CASE 189 OF 2011

DANIEL DAVID NJUGUNA.....PLAINTIFF

VERSUS

NATIONAL BANK OF KENYA.....1ST DEFENDANT

LEGACY AUCTIONEER SERVICES.....2ND DEFENDANT

R U L I N G

Before me are two similar applications dated 9-5-2012 and 28-5-2012. Both applications essentially seek stay of execution of the judgment herein delivered on 22-2-2012 pending the hearing and determination of the appeal.

Both applications filed by the 1st and 2nd defendant/applicant argue that they have a strong and arguable appeal and that should the execution process be undertaken by the plaintiff/respondent they stand to suffer loss and damages and that their appeal shall be rendered nugatory. The supporting affidavits of Ronald Mwangi Kibuchi and Mrs. D.W. Gituga say as much.

The respondent through the affidavit of Mr. Onsongo his counsel as well as the grounds of opposition has opposed the two applications. In a nutshell what Mr. Onsongo is saying is that his client should be left to enjoy the fruits of the judgment.

The appeal process is a matter of right for any litigant. As clearly observed by the 1st respondent in its submission the three grounds that are legally and generally considered before such application is allowed are:-

Whether the application has any good chance of success.

Whether the appeal shall be rendered nugatory if stay is not granted.

Whether the application shall suffer loss if that stay is not granted.

I am satisfied that the applicants' applications are meritorious. Considering the intricate issues in this matter and the fact that if the execution process is commenced, the same shall be onerous. On the part of the parties herein, I do order that:-

There be stay of the judgment to delivered on 22-2-2012 pending the hearing and determination of the intended appeal.

The applicants/defendants do pay the taxed costs to the respondent within the next 30 days after issuance of certificate of costs.

Costs of this application to the respondent

Dated, signed and delivered at Kisumu this 27th day of July, 2012.

**H.K. CHEMITEI
JUDGE**

In the presence of:

.....for the plaintiff

.....for the respondents

HKC/va