



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

Civil Case 207 of 2009

DAMARIS KAVINZA OKEYO.....APPLICANT/PLAINTIFF

VERSUS

EQUITY BANK LTD.....RESPONDENT/DEFENDANT

R U L I N G

By her notice of motion dated 10-9-2012 the applicant seeks stay of execution pending the hearing and determination of the appeal in the court of appeal.

The applicant's application for injunction staying the sale of land parcel No. **Kisumu/Nyalenda "B"/1947** was dismissed on 23-1-2012.

The application is supported by the annexed affidavit of the applicant sworn on 4-9-2012. The net effect of her affidavit is that she has a strong and an arguable appeal.

Further, that should the security be sold then she and her family stand to suffer loss and damages.

Geoffrey Masike Wanyonyi the credit manager of the defendant has sworn a replying affidavit in opposition to the applicant's application. He contends that the outstanding balance as at 3-12-2009 was **Kshs. 1,346,637.85/=** and the same continuous to attract interest.

According to him the applicant has no credible appeal hence the need to disallow her application. He further averred that the plaintiff/applicant should deposit the sum of Kshs. 1,346,637.85/= if the application is allowed.

It is a common practice now to allow such application conditionally if the court is satisfied that there is such a credible appeal. This is clearly expressed under order of 42 (2) of the Civil Procedure Rules and the sections thereunder

I am convinced that the defendant /respondent is not an institution of straw and thus capable of refunding the applicant should she succeed in her appeal. However, equity must be seen to be fair on both sides. The bank at least must be compensated while awaiting the appeal. Equally the applicant should be granted a chance or else the appeal may be rendered nugatory.

I shall therefore allow the said application on the following terms:-

(a) Stay pending appeal is hereby allowed on condition that the applicant/plaintiff pays the sum of (Kshs. 1,000,000/=). to the defendant within the next 30 days from the delivery of this ruling.

(b) In default the defendant may proceed to realize the security.

(c) Cost to the respondent.

Dated, signed and delivered at Kisumu this 15th day of October 2012

**H.K. CHEMITEI
JUDGE**

In the presence of:

Otieno for Mwamu for the applicant

Onyango for the respondent

HKC/va