



REPUBLIC OF KENYA

High Court at Nakuru

Civil Suit 55 of 2004

CHARLES KIMOSO TOTON.....PLAINTIFF/RESPONDENT

VERSUS

REUBEN CHERUTICH CHEBON.....1ST DEFENDANT/APPLICANT

JOB CHEBON T/A WOTE EXECUTIVE.....2ND DEFENDANT/APPLICANT

RULING

In a Notice of Motion dated 2nd August 2012 and filed on 3rd August 2012 the Applicant sought a stay of the orders granted in a Judgment delivered in this court on 29th June 2012.

The conditions for stay of execution of a judgment are set out in Order 42, rule 4(2) of the Civil Procedure Rules -

“(1)

(2) *No order for stay of execution shall be made under sub- rule 1 unless -*

(a) *the court is satisfied that substantial loss may result to the Applicant unless the order is made, and that the application has been made without unreasonable delay, and*

(b) *such security as the court orders for the due performance of such decree or orders as may ultimately be binding on him has been given by the Applicant.”*

Judgment herein was given on 29.06.2012. A Notice of Appeal was filed on 9th July 2012, that is barely 11 days after the delivery of the Judgment. Filing of the appeal does not constitute a stay of execution. That is what rule 4(1) of **Order 42** says.

The Application for a Stay of Execution was filed on 3rd August 2012, that is some 34 days after the judgment was delivered.

In my view an application for stay should be applied for within a reasonable time. A reasonable time is a question of fact. Under rule 5 of Order 42, an application for stay of execution may be made informally immediately following the delivery of judgment or ruling.

The rule therefore is that the application may be made “informally” - i.e. verbally without a written application – immediately (pronto) following the delivery of judgment or ruling. An application for stay of execution made after 30 days following the delivery of the judgment or ruling may in the terms of rule 4(5) of the Order 42 of the Civil Procedure Rules, not be considered immediate, but not to be undue delay in terms of rule 4(2) of the said Order. The Applicant therefore fulfills one of the requirements of 4(2) aforesaid. He has however not demonstrated what damage or loss he would suffer if execution proceeds. He has also not offered any security to ensure performance of the decree should his appeal before the Court of Appeal be unsuccessful.

In the circumstances, I grant a stay of execution on terms following -

- (a) Payment to the Decree-holder of half the decretal sum Kshs 865,670.60 and
- (b) the deposit of the other half Kshs 865,670.60 in the joint names of counsel for the decree-holder and the judgment-debtor

The decree-holder shall have the costs of this application.

There shall be orders accordingly.

Dated, signed and delivered at Nakuru this 6th day of December, 2012

M. J. ANYARA EMUKULE

JUDGE