

REPUBLIC OF KENYA

High Court at Nakuru

Civil Suit 151 of 2004

FRANCIS SIRMA KIOS.....PLAINTIFF

VERSUS

KIBORE SIGILAI TELE.....DEFENDANT

RULING

This Ruling concerns a Notice of Motion dated 23rd July 2012 and filed on 25th July 2012 in which the Applicant seeks a stay of the orders granted in my judgment delivered on 18th May 2012 and the decree therein issued on 12th July 2012.

The conditions for a stay of execution are outlined in Order 42, rule 4(1) and 4(2) of the Civil Procedure Rules 2010. Rule 4(1) provides that an appeal does not constitute a stay, and that the court which issued the orders being appealed against may grant a stay of execution of its judgment. Under rule 4(2) aforesaid an applicant seeking a stay of execution must demonstrate -

- (a) *that he would suffer substantial loss unless the orders are granted,*
- (b) *that the application for stay has been brought without undue delay, and*
- (c) *the applicant offers such security as the court may order to bind him in the event his appeal would be unsuccessful.*

The Appellant has offered no security. The judgment herein was delivered on 18th May 2012. The Application for stay was made on 25th July 2012, over 2 months after the judgment. A delay of 2 months is not reasonable. The application was not made without undue delay.

Counsel for the Respondent raised a Preliminary Objection on a matter of law that the Notice of Appeal was defective on the ground that it did not comply with the requirements of Rule 75 of the Court of Appeal Rules. That is a matter this court does not have the jurisdiction to determine. It can only be properly raised in the Court of Appeal.

The Applicant has otherwise not demonstrated compliance with the requirements of Order 42, rule 4(2) of the Civil Procedure Rules 2010. The Application dated 23rd July 2012, and filed on 25th July 2012 is therefore dismissed with costs to the Respondent.

It is so ordered.

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

M. J. ANYARA EMUKULE

JUDGE