



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
CIVIL APPEL NO. 118 OF 2010

KENYA FLOURSPAR CO. LTD.
..... APPELLANT

VERSUS

WILLIAM MUTUA 1ST
RESPONDENT
THE ATTORNEY GENERAL 2ND
RESPONDENT

R U L I N G

An appeal would ordinarily not operate as a stay of execution unless the applicant shows that he is bound to suffer substantial loss if stay is not granted. Substantial loss means more than just the mere loss of income and more so if the same is not exorbitant. We have not been told herein that the damages awarded by the lower court were exorbitant to the extent of being out of the applicant's reach if half thereof is paid to the first respondent in the event that the appeal succeeds. Besides, there has been no demonstration by the applicant of the 1st respondent's level of poverty such that he may be considered to be a person of straw. One who alleges is required to prove.

In sum this court does not see any good reason to have the orders made by the learned Resident Magistrate set aside. The present application is thus dismissed with costs.

J.R. KARANJA
JUDGE

8/2/2011

Mr. Songok; May I be granted temporary stay to comply.
Mr. Marube; No objection

Court; Applicant granted temporary stay orders for a period of 14 days.

J.R. KARANJA
JUDGE