

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ELC NO. 658 OF 2009
MOHAMUD MOHAMED MOHAMUD.....PLAINTIFF/APPLICANT
V E R S U S
ATHI WATER SERVICES BOARDDEFENDANT/RESPONDENT

R U L I N G

The Plaintiff has filed a Notice of Appeal in the Court of Appeal where he seeks to appeal against the ruling of this Court delivered on 8th December 2010 in which this Court dismissed with costs his application for injunction pending the hearing and determination of the suit between him and the Defendant. He has now applied under Order 42 rule 6 of the Civil Procedure Rules and sections 1A, 1B and 3A of the Civil Procedure Act for stay of the ruling pending the appeal. The application was not defended.

This court's discretion in an application for stay of execution is fettered by three conditions: the applicant has to show he will suffer substantial loss; he has brought the application without unreasonable delay; and, he has furnished security (**Carter And Sons Ltd –Vs- Deposit Protection Fund Board And Others**), **Civil Appeal No. 291 of 1997**. However, this court declined to grant the orders of injunction. This was a negative order, incapable of execution, and therefore incapable of stay (**Samuel Maina Njoroge –Vs- Land Disputes Tribunal Ruiru And Others, Civil Application No. 78 of 2010 at Nairobi**). In **Venture Capital And Credit Ltd –Vs- Consolidated Bank of Kenya Ltd, Civil Application No. 349 of 2003 at Nairobi**, the Court of Appeal held that where there is no positive order made in favour of the Respondent which is capable of execution the application for stay of the ruling is misconceived.

Accordingly, I dismiss the motion dated 10th December 2010.

DATED AND DELIVERED AT NAIROBI
THIS 9TH DAY OF MARCH 2011
A. O. MUCHELULE
J U D G E