



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

CIVIL APPEAL NO. 53 OF 2011

DUNCAN NYAMWAYA OGENDO APPELLANT

-VERSUS-

CO-OPERATIVE BANK OF KENYA LIMITED RESPONDENT

RULING

The application before court is by way of a Notice of Motion dated 10th May, 2011 brought pursuant to Order 22 rule 22 Order 42 rule 6(1) (2) and Order 51 rule 1 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act seeking for the following Orders:-

1. That for the purposes of the record this application be certified urgent and heard forthwith and ex parte in the first instance.
2. That pending the hearing and determination of this application, there be a stay of execution of the judgment in WINAM PMCC NO. 310 OF 2010 and all the orders consequential thereto.
3. That pending the hearing and determination of this appeal, there be a stay of execution of the judgment in WINAM PMCC NO. 310 OF 2010.
4. That the cost of this application be provided for.

The application is supported by the affidavit of **Duncan Nyamwaya Ogendo** and on the grounds that; a default judgment had been entered against the applicant in **WINAM P.M.C.C. NO. 310 of 2010**; the applicant made an application to set aside the default judgment which was dismissed and he has since appealed against the same; the appeal has a high chance of success; execution may proceed before determination of the appeal and the appellant is likely to suffer substantial loss.

The application was opposed for being incompetent as it does not meet the prerequisite of granting such orders, as no security had been deposited and that the motor vehicle herein attached was sold in satisfaction of the decree; further the learned counsel for the respondent confirmed that the decree was fully satisfied.

In response, the applicant’s counsel stated that he is not aware of the purported advert and execution of the decree.

From the above submissions it is obvious that the current application has been taken over by events. The stay was meant to avert execution of the decree which decree was executed and as admitted by the respondent’s counsel this was in full satisfaction of the said decree. In the circumstances the orders sought for will be of no consequence. In the circumstances I decline to grant the application. Costs in the cause.

DATED AND DELIVERED THIS 27TH DAY OF OCTOBER, 2011.

**ALI-ARONI
JUDGE**

In the presence of:

..... present for Appellant

.....present for Respondent