



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL APPEAL NO. 37 OF 2011

(Arising from Civil Case No. 3737 of 2005 of the Senior Resident Magistrate’s Court

at Mombasa: T. Ole Tanchu – S.R.M.)

KILINDINI WARE HOUSE

LIMITED.....APPELLANT

=VERSUS=

LAZARO MWACHIA DANSON.....RESPONDENT

RULING

Before court is the Notice of Motion dated 20th April 2011 in which the Appellant seeks inter alia the following orders:

“THAT pending the hearing and determination of the appeal filed herein there be a stay of execution of the decree of Honourable T. Ole Tanchu Senior Resident Magistrate Mombasa in Senior Resident Magistrate’s Civil Case No. 3737 of 2005 Lazaro Mwachia Danson –versus- Kilindini Warehouses Ltd”

By consent it was agreed that the application be disposed of by way of written submissions. Both parties having duly filed and served their submissions by 7th September 2011 it is now upon this court to rule on the application.

This application arises from the decision of the learned Senior Resident Magistrate Hon. Ole Tanchu in SRMCC No. 3737 of 2005. The learned trial magistrate decided that case in favour of the Respondents herein and awarded damages in the sum of Kshs.52,000/-. Costs were thereafter taxed at Kshs.38,795/- thus the decree was issued for a sum of Kshs.94,075/-. The Appellants however being dissatisfied with the decision of the learned magistrate filed an appeal therefrom. They now come to this court to seek a

stay of execution pending the inter parties hearing of that appeal.

I have read and have given careful consideration to the submissions filed by both parties in this matter. I am of the view that the Appellants have an **'arguable'** appeal. In order not to render their appeal nugatory it is desirable that execution be stayed pending the hearing and determination of such appeal. As such I do grant a stay of execution as prayed **subject only** to the Appellant depositing within seven (7) days of today's date a sum of Kshs.90,000/- (read Ninety Thousand only) into a joint interest earning account opened in the names of both lawyers. Failure to comply with this pre-condition will mean that the stay is automatically set aside and execution may proceed.

It is so ordered.

Dated and Delivered in Mombasa this 13th day of October 2011.

M. ODERO
JUDGE

In the presence of:
Mr. Hamza for Appellant
No appearance by Respondent