

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Civil Appeal 171 of 2009

DAVID ANDANJE.....APPELLANT/APPLICANT

VERSUS

NAKURU WATER & SANITATION SERVICES LTD.....RESPONDENT

RULING

The applicant's application for an injunction to the court below was dismissed and being aggrieved by that dismissal, he has preferred an appeal to this court. In the meantime he has filed this application for stay of execution pending the determination of the appeal.

The respondent has opposed the application on the grounds that it is bad in law, inept, misconceived and incompetent in that this court lacks jurisdiction to grant order sought.

There are enough authorities for the proposition that where a matter is dismissed, the court cannot grant an order for stay of execution (except for costs) and by that dismissal, the court will not have made any positive order requiring the applicant to do something capable of being stayed.

See **Kimakia Bus Services Ltd. Vs. Electrocom International Ltd**, Civil Application No.NAI. 63 of 1984.

In the matter before me, the applicant's application for injunction having been dismissed, the only order that flows from that dismissal is incapable of execution and the applicant can only seek to stay execution of orders as to costs.

For these reasons, the application must fail and is hereby dismissed with costs.

Dated, Signed and Delivered at Nakuru this 5th day of February, 2010.

W. OUKO
JUDGE