



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT KISII**

**Civil Appeal 247 of 2009**

**LUORE MANAGEMENT LIMITED.....APPELLANT**

**-VERSUS-**

**SAMSON OGOLA OYALA.....RESPONDENT**

**RULING**

Before the trial court at HomaBay the respondent sued the applicant for orders of unconditional opening of his business at the applicant's premises and for general damages. The applicant filed a Defence and Counterclaim. He denied locking the respondent's premises. The applicant counter-claimed for outstanding rents and for power bills owed to Kenya Power and Lighting Co. Ltd. The matter was heard and the respondent found to be the applicant's tenant. It was also found the respondent had terminated his lease effective 1st July, 2009. The court found the applicant had locked out the respondent which was illegal. It ordered the re-opening of the premises and general damages for Kshs. 20,000/= against the applicant. On the Counterclaim, it gave judgment in the sum of Kshs. 45,480/= being rent arrears and Kshs. 19,979/10 being electricity bills.

The applicant has appealed against the judgment and, pending the hearing and determination of the appeal, seeks stay under *Order 41 rule 4(1) of the Civil Procedure Rules*. There was no response from the respondent.

If the respondent executes the decree he will be seeking to recover Kshs. 20,000/= plus costs. This would be a money decree. It is not usual for a court to grant stay of execution in monetary decrees unless there are special circumstances such as the fact that the amount payable under the decree is substantial and the respondent has no known assets within the jurisdiction from which the applicant can recover in event that the appeal is successful. (See *Singh V.Runda Estates Ltd [1960] EA 263*). The amount in this case is not substantial, and it has not been sworn or shown that the respondent is a man of no known assets. Consequently, I find the applicant has not demonstrated that he stands to suffer substantial loss if the application is not granted.

The applicant asked that the respondent be ordered to vacate the premises or he be ordered to continue to pay due rents until the appeal is heard and finalized. The trial court found the applicant had not, in the Contention, asked the respondent to vacate the premises. This court may not be asked to re-write the tenancy contract between the parties, or to supervise its life.

There was no security for the due performance of the decree offered by the applicant.

The application is hereby dismissed.

Dated, signed and delivered at Kisii this 2nd day of February, 2010.

**A.O.MUCHELULE**

**JUDGE**

**2/2/2010**

Before A.O.Muchelule-J

Court clerk-Bibu

Mrs. Opanga for Applicant

**Court:** Ruling in open court.

**A.O.MUCHELULE**

**JUDGE**

**2/2/2010**