



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

OF KISII

CIVIL APPEAL 78 OF 2009

JOHN ODHIAMBO.....APPELLANT/APPLICANT

-VERSUS-

SOSPETER OTIENO.....RESPONDENT

RULING

The respondent appears to be executing for costs of Kshs. 37,505/= and has instructed Homeland Services (Auctioneers) who have attached the applicant's household goods and livestock. The application has been brought under *Order 41 rule 4 of the Civil Procedure rules and sections 3A and 63(e) of the Civil Procedure Act* for stay of that execution. It was served but there was no response.

The application herein was filed on 9/11/2009, judgment that is being appealed for having been entered on 25/3/2009. There was no explanation for that delay. An unexplained delay of about 8 months is inordinate for the purpose of stay of this application.

Secondly, in the Court of Appeal decision in *Francis Kabaa.V.Nancy Wambui and Another Civil Application no. 298 of 1996at Nairobi* it was held that where what is sought to be stayed is an order for costs, the same cannot be granted as the appellant, if he succeeds in his appeal, would be refunded his costs. The requirement to show substantial loss has therefore not been discharged by the appellant.

The application is ordered dismissed.

Dated, signed and delivered at Kisii this 1st day of February, 2010.

A.O.MUCHELULE

JUDGE

1/2/2010

Before A.O.Muchelule-J

Mr. Odero for applicant

COURT: Ruling in open court.

A.O.MUCHELULE

JUDGE

1/2/2010