



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 21 of 2010

COOPERATIVE INSURANCE COMPANY OF KENYA LTD.....APPELLANT
VERSUS
DAVID MBUGUA NGENE.....RESPONDENT

RULING

1. Cooperative Insurance Company of Kenya Ltd, who is the appellant, has moved this court under Order XLI Rule 4(1) & (2), Order L Rule 1 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. The applicant seeks an order for stay of execution of the ruling and decree passed in Limuru SRMCC No.272 of 2009 pending the hearing and determination of the appeal.
2. The respondent David Mbugua Ngene, obtained a judgment against the appellant in the lower court for the sum of Kshs.78,208/= together with costs and interest. The appellant is apprehensive that it may not be able to recover the amount if paid to the respondent should the appellant be successful in its appeal, hence the application for stay of execution.
3. The respondent objects to the application contending that the appellant has not demonstrated that the respondent may not be able to refund the decretal sum if paid to him.
4. I have given due consideration to this application. I have also considered the authorities which were cited. The circumstances under which an order for stay of execution may issue are clearly indicated under Order XLI Rule 4(2) as follows:
 - (i) Where the court is satisfied that substantial loss will result to the applicant unless the order of stay of execution is issued, and
 - (ii) The application has been made without unreasonable delay, and
 - (iii) The applicant has provided or is ready to provide such security as the court may order for the due performance of the decree.
5. In this case, the application for stay of execution was made just about a month after the judgment subject of the decree. Hence, the application has been made timeously. As regards the issue of substantial loss, the appellant simply maintains that it may not be able to recover the amount if paid to the respondent because the amount is substantial and the respondent's means of income are unknown. From the affidavit sworn in support of the application, it is clear that the judgment against the appellant is for a sum of Kshs.78,208/= plus costs and interest. That amount cannot be considered substantial by any standard. Moreover, the appellant has not laid any basis for his contention that the respondent may not be able to repay the decretal sum if it is paid to him. The fact that the respondent's means are not known to the appellant is not proof that the respondent is not a person of means. There are no facts upon which the appellant's apprehension that it will suffer substantial loss can be justified. I find that the appellant has failed to demonstrate the critical requirement that it may suffer substantial loss if the order for stay of execution is not granted. Accordingly, this application must fail. It is dismissed.

Dated and delivered this 15th day of March, 2010

H. M. OKWENGU
JUDGE

In the presence of: -

Thuranira for the appellant

Advocate for the respondent absent

Eric - Court clerk