



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

Civil Appeal 696 of 2009

KEFA OSEKO ORENGE.....APPELLANT
VERSUS
KARIRANA ESTATE LTD.....RESPONDENT

RULING

1. By an amended notice of motion dated 17th December, 2009, Kefa Oseko Orenge, (hereinafter referred to as the applicant), seeks an order for stay of execution of the judgment in Limuru SPMCC No.10 of 2006 pending the hearing of his appeal. The applicant also seeks an order for release of his Roller Mill Unit 6FY-35 which has been attached by Mararo Auctioneers.

2. I have given due consideration to the applicant's motion. I have also considered the submissions which were made before me by counsels. It is evident that the applicant is aggrieved by the ruling of the lower court dismissing his suit. The applicant has lodged an appeal in this court against that dismissal. It is also not disputed that the respondent has through an auctioneer attached the applicant's Posho Mill and that the attachment is in respect of costs following the dismissal of the applicant's suit. No copy of any decree has been availed to this court and it is evident that there is an issue regarding the propriety of that attachment.

3. I have no doubt that the applicant will suffer substantial loss if the Posho Mill is sold. However, I have the duty to take into account the interests of both parties. For that reason, I will grant an order for stay of execution pending appeal on the following conditions:

- (i) The applicant shall deposit into this court a sum of Kshs.50,000/= as security within 15 days from today.
- (ii) That upon deposit of the sum of Kshs.50,000/= into court, the Auctioneer shall forthwith and unconditionally release the applicant's Roller Mill Unit 6FY-35.
- (iii) That the appellant shall file a record of appeal within 90 days and take all necessary action to facilitate the speedy disposal of the appeal.
- (iv) The Auctioneer is at liberty to pursue the issue of his costs in the lower court.

Orders accordingly.
Dated and delivered this 11th day of March, 2010

H. M. OKWENGU

JUDGE

In the presence of: -

Omao H/B for Omosa for the appellant

Ms Serem for the respondent

Eric - Court clerk