



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Appeal 959 of 2006**

**SOLACE HOTEL LTD. .... APPELLANT**

**VERSUS**

**CATERING & TOURISH DEV. LEVY TRUSTEES. .... RESPONDENT**

**R U L I N G**

The application before the court is dated 16<sup>th</sup> May, 2006. It seeks that this court do stay all proceedings in Milimani CMCC No. 11810 of 2004, pending the hearing and final determination of this appeal.

To the best of this court understanding, the decision from which the applicant purports to appeal is a decision arising as a result of an interlocutory application. The application sought to strike out court proceedings for the reasons shown thereon but the court rejected the application and ordered that proceedings continue. Aggrieved by that court's order to proceed, the applicant filed this appeal. He has brought this application seeking the stay of the said proceedings until its appeal is heard and determined.

The applicant approached the court under order 41(4) of the Civil Procedure Rules and under S3A and 63(3) of the Civil Procedure Act, the last two invoking the inherent jurisdiction of this court.

I have carefully perused and considered the provisions of O. 41 rule. It deals with stay of execution pending the hearing and final determination of the pending appeal. Mr. Nyangau for the applicant wisely admitted that fact and that way made the application of the said provision, irrelevant to this application. That also therefore, means that the applicant's approach to this court under Section 3A and Section 63(3) aforementioned must be redefined.

Mr. Nyangau proceeded to ask this court to stay proceedings properly going on before the lower court either under Section 3A or S63 (e) of the Civil procedure Act. He did not explain how that should happen. He seemed to agree that the said provision which invoke the inherent jurisdiction of this court to do justice, should be called into use where all the laws of this country are silent on the situation that is before the court. He did not assert that there is no law or legislation under which a party can halt proceedings going on before a tribunal. All he said is that this court has power to halt the proceedings without pointing out where such powers are.

Having considered the issue in general terms, I hold that this court invokes its inherent jurisdiction to give justice to a case under S 3A or 63 aforementioned only where the court is persuaded that there is no relevant specific statutory or common law provision in existence. The

applicant has not successfully persuaded this court to that end.

Furthermore I am not so sure without seeking to decide either way, that the applicant could have appealed without seeking the leave of the lower court from which the appeal arose. I say so because the appeal arises from what clearly was an interlocutory application.

Thirdly, the applicant appears to hint that one of its reasons for wishing to halt proceedings in the lower court was because the court had no jurisdiction. It might be suggested, without deciding it, that such issues are issues which could still be raised at the lower court in the final arguments in the proceedings of the said court. They could also form grounds of appeal if the applicant finally lost the case at the lower court. That is to say, to avoid to stall the result of the case in the lower court, the applicant could have withheld appealing until the final and full result of the case would be reached.

Be that as it may, this court declines to stay the said proceedings in the lower court, if they are still alive, since it has no powers under order 41 rule 4 aforesaid. It similarly refuses to invoke the court's inherent jurisdiction under S. 3A and 63 (e) of the Civil Procedure Act for the reasons already given above.

This result is that this application is dismissed with costs. Orders accordingly.

Dated and delivered at Nairobi this 7th day of April 2010.

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**D A ONYANCHA**

**JUDGE**