

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Case 184 of 2001

SEE BOUND LIMITED.....PLAINTIFF

VERSUS

LONDON DISTILLERS LTD.....DEFENDANT

R U L I N G

Application dated 14/5/09 is brought under Order XLIV and Section 3A of Civil Procedure Act.

The orders sought is a temporary stay of the proceedings herein pending hearing and determination of this application (2) that court do grant order for stay of proceedings pending hearing and determination of Defendant's appeal to the Court of Appeal. And as an alternative the court be pleased to grant an order of stay of Execution of decree pending Defendant's appeal to the Court of Appeal.

The grounds are set out on the applications stating that the Applicant is aggrieved by judgment/decree dated 30/5/2008 and filed a Notice of Appeal. The Defendant's counterclaim was dismissed with costs and Defendant/Applicant is willing to furnish such security as the court may require unless the proceedings or decree are stayed.

The Applicant stands to incur substantial loss. The application is supported by affidavit of Mohan Galot who has demonstrated the steps taken by the Applicant to the proposed appeal. The court has perused the authorities filed by the Plaintiff/Decree holder and the Defendant *Glaucone Grant Ltd vs. Kabansora Millers Ltd* the Court of Appeal said that "The superior court a discretion is fettered by 3 conditions. Firstly the Applicant must established a sufficient cause. Secondly the court must establish that substantial loss would ensure if order is not granted and thirdly the applicant must furnish security and the application must be filed without delay.

In *Re Amarco (K) Ltd. 2006* the dispute was regarding a disputed affidavit. On the part of the Plaintiff/Decree holder the case of *Glaucone Grant Ltd vs. Kabansora HCC No. 400 of 2002* is same as that stated by Defendant. The authority of *University of Nairobi & Another vs. Peter Kiplagati Tum.* The court granted stay for the reason that the Applicant may suffer substantial loss unless orders are granted and that the application was filed without delay and since security as the court may order has been given. *New Stanley Hotel Ltd V. Arcade Tobaccos Ltd.* It was held that before making an order for stay of execution the court must that substantial loss may result to the Applicant unless the order was made.

I have perused the application and considered the submissions of each party I am inclined to grant stay of execution on condition that the Applicant shall furnish security in the value of Shs.2,000, 000. The security shall be provided within 21 days of today.

Dated and delivered at Nairobi this 11th day of June 2010.

J. N. KHAMINWA

JUDGE

