

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Suit 239 of 2007

DR. CHRISTOPHER WAITHAKAPLAINTIFF

VERSUS

BARCLAYS BANK OF KENYA LIMITED.....DEFENDANT

RULING

This Ruling relates to a motion dated 24th June 2010 and filed on 25th June 2010. It was supported by the Affidavit of the Applicant sworn on 24th June 2010, and the grounds on the face thereof.

It was opposed by the Replying Affidavit of Nereah A. Okanga, the legal officer of the Respondent sworn on 2nd July 2010.

The motion was urged before on 5th July 2010 by Mr. Muraya and Ms Kamau for the Applicant and Respondent respectively. I have considered the motion, the Supporting Affidavit of Dr. Christopher Waithaka Karitu, the Applicant together with the grounds of the face of the motion. I have also considered the Replying Affidavit of Nereah Okanga. Lastly, I have considered the submissions by Mr. Muraya learned Counsel for the Applicant, Mrs. Kamau Learned counsel for the Respondent and render my opinion and decision in the following paragraphs.

Although the motion is premised upon the provision of **Order XLI rule 4(1) (2) & (6)** of the Civil Procedure Rules, (which relate to a stay of execution or proceedings), the prayer sought is temporary injunctions, a matter dealt with in my Ruling of 15th June 2010.

My considered view of the matter is that if the applicant is aggrieved by the said Ruling, the proper action or steps to take is to lodge an appeal in accordance with rule **5(2)** of the Court of Appeal Rules. What the applicant cannot do is to come back to this court, and ask on pray for the same orders. To pray and consider such orders is equivalent to this court sitting on appeal on its own Ruling. This court cannot do that, and in relation to a Ruling on injunctive Orders, I do not think it has even jurisdiction to review them. The Application therefore fails on that ground.

In so far the motion is premised upon the provisions of **Order XLI rule 4(1) (2) (4) & (6)** of the Civil Procedure Rules, it is incompetent. It is incompetent because in a ruling dismissing an application for an order of injunction, there is no order to stay. The aggrieved party's remedy, again is an appeal to the Court of Appeal in accordance with the rules of that court.

For those reasons, I find the Appellant's motion of 24th June 2010 lacking in merit, and the same is dismissed with costs to the Respondent.

There shall be orders accordingly.

Dated, signed and delivered this 22nd Day of July 2010

M. J. ANYARA EMUKULE

JUDGE