



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
CIVIL APPEAL NO. 97 OF 2010

NARENDRA SOLANKI APPELLANT

VERSUS

D. M. PANDYA.....RESPONDENT

RULING

The application dated 8th June 2010 is for the basic order that there be a stay of proceedings and orders of the Resident Magistrate in Winam SRMCC Number 646 of 2005 pending the hearing and determination of the applicant's appeal to the High Court at Kisumu from the orders made on the 17th May 2010 and 7th June 2010.

The grounds for the application are that the intended appeal is arguable and that unless an order of stay is granted the applicant shall suffer irreparable loss thereby rendering the appeal nugatory.

An affidavit in support of the application is deponed by the applicant himself. Apart from the memorandum of appeal dated 3rd June 2010, the affidavit does not contain copies of the ruling and the orders made on the 17th May 2010 and 7th June 2010 which are the subject of the appeal neither is there any copy of the proceedings leading to the disputed orders. The court would not therefore be in a position to determine whether or not the appeal is arguable and whether or not if stay is not granted the likelihood of the applicant suffering irreparable loss is high.

In any event, even if the appeal is merited the fact that the applicant may be left in a position which requires that he defends two suits against him is not by itself sufficient to occasion substantial or irreparable loss.

The absence of the orders appealed against as well as the proceedings in Winam SRMCC number 646 of 2005 and High Court Civil case number 90 of 2003 renders it impossible for this court to see the link between the two cases (if any).

In the end result there are no reasons good enough for this court to exercise discretion in favour of the applicant.

The threshold for the grant of stay pending appeal has not been fulfilled.

The application must and is hereby dismissed with costs.

Delivered, dated and Signed at Kisumu this 27th day of September 2010

J. R. KARANJA

J U D G E

JRK/aao