

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 210 of 2008

BEGUM SAYED T/A HOUSE PROUD UNIFORMS.....APPELLANT

VERSUS

VERONICA NJERI KARANJA.....RESPONDENT

R U L I N G

1. The appellant Begum Sayed t/a House Proud Uniforms (hereinafter referred to as the applicant), is dissatisfied with the judgment and decree delivered by the Senior Resident Magistrate on 8th February, 2008 in Milimani RMCC No.8649 of 2005. She lodged an appeal before this court on 29th April, 2008. By a notice of motion dated 17th October, 2008, the applicant moved this court under Order XLI Rule 4 of the Civil Procedure Rules, Order L Rule 1 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act, seeking an order for stay of execution of the ruling or decree of the lower court, pending the hearing and determination of the appeal. The applicant maintains that unless the order is granted she shall suffer irreparable loss as she has an arguable appeal which has real chances of success. The applicant further maintains that the respondent is not likely to be prejudiced if the orders sought are granted and that the balance of convenience is in favour of the status quo being maintained.
2. The applicant has sworn an affidavit in support of the application in which she reiterates that she will suffer irreparable loss if the orders are not granted as the auctioneers who have already proclaimed her goods are likely to dispose off the goods. The respondent Veronica Njeri Karanja objected to the application through a replying affidavit which was sworn on 9th December, 2008.
3. I have considered the application, the affidavit in support and in reply and the submissions made by both counsels. Under Order XLI Rule 4(2) of the Civil Procedure Rules, an order for stay of execution pending appeal can only issue if the court is satisfied that substantial loss may result to the applicant unless the order is made. In this case, the applicant contends that she will suffer irreparable loss unless the order for stay of execution is issued. However, the decree copy of which was annexed to the applicant's affidavit is only for a sum of about Kshs.65,000/= . The applicant has not satisfied this court that the respondent would not be in a position to repay this money should the applicant succeed in her appeal. The applicant has not therefore demonstrated to this court that she is likely to suffer any substantial loss. The respondent has a lawful judgment in her favour. The court must therefore balance the interests of the applicant against the interests of the respondent. For these reason, I decline to issue the orders sought and dismiss the application dated 17th October, 2008.

Dated and delivered this 26th day of January, 2009

H. M. OKWENGU

JUDGE

In the presence of: -

Arum for the appellant/applicant

Respondent present in person