

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 25 of 2009

CYRUS KOMO CHEGE.....APPELLANT

VERSUS

MINEH WAIRIGU
MBUGUA.....RESPONDENT

R U L I N G

1. By a chamber summons dated 27th April, 2009, Cyrus Komo Chege, who is the appellant in this appeal, seeks an order for stay of execution pending the hearing and determination of his appeal, against the ruling dated 28th January, 2009, delivered by the Chief Magistrate in the Magistrate's Court at Kiambu. The application is supported by an affidavit sworn by the appellant, in which he maintains that his appeal has very high chances of success and that unless an order for stay of execution is granted, the appeal will be rendered nugatory. Mr. Kinga who appeared for the appellant, relying on *Butt vs Rent Restriction Tribunal [1982] KLR 417*, and *Bob Morgan Systems Ltd & another vs Jones [2004] 1KLR 194*, urged the court to grant the orders sought.
2. The application is opposed through a replying affidavit sworn by Mr. Julius Orenge. It is maintained that the application is incompetent and fatally defective as there is nothing to be stayed in the ruling subject of the appeal. It is further contended that the applicant has not established substantial loss.
3. I have considered the ruling dated 25th January, 2009 which is sought to be stayed. In the ruling, the trial magistrate has sought to clarify the actual sale price set out in the consent order dated 30th November, 2007. The trial magistrate has clarified that the consent order signed by the parties set up the purchase price at Kshs.1.2 million. The appellant apparently is aggrieved as he was of the view that the purchase price should read 2.5 million.
4. Under Order XLI Rule 4(2) of the Civil Procedure Rules, an order for stay of execution pending appeal can only issue on the following conditions:
 - (i) Where the court is satisfied that substantial loss will result to the applicant unless the order of stay of execution is issued;
 - (ii) That the application has been made without unreasonable delay;
 - (iii) That the applicant has provided or is ready to provide such security as the court may order for the due performance of the decree.
5. In this case, the applicant has merely alleged that his appeal will be rendered nugatory unless an order for stay of execution is granted. The applicant has not demonstrated to this court in what way his appeal will be rendered nugatory as it is evident that should the applicant succeed in his appeal, the purchase price would be adjusted upwards. Of more importance is the fact that the applicant has neither alleged nor established any substantial loss nor has any security been offered for the due performance of the decree. For the above reasons, I find no merit in this application and do therefore dismiss it with costs. Those shall be the orders of this court.

Dated and delivered this 15th day of June, 2009

H. M. OKWENGU

JUDGE

Ruling delivered

Advocate for the appellant absent

Advocate for the respondent absent