

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

Civil Case 223 of 2008

MUGAMBI WANG'OMBE PLAINTIFF

VERSUS

CO-OPERATIVE BANK OF KENYA LTD. 1ST DEFENDANT

JOSEPH GIKONYA *t/a*

GARAM INVESTMENTS 2ND DEFENDANT

DR. JOHN KARUNGAI NYAMU 3RD DEFENDANT

R U L I N G

Notice of Motion dated 31/3/09 seeking orders for stay pending appear to restrain the respondents from evicting the applicants from the suit property. Application is made under Order 41 Rule 4 (1), (2) and (6) and also pending the filing and hearing and determination of application under Rule 52 (b), Court of Appeal Rules.

The grounds are set out on the application and affidavit of the applicant, Mugambi Wang'ombe. It is shown that a Notice of Appeal has been filed. A memorandum of proposed appeal is attached. Order 41 Rule 4 provides of stay of execution pending appeal.

I have perused the authorities relied upon by the applicant. I have also read the replying affidavit sworn by the respondent (3rd defendant). He had sued the applicant in another suit (HCC 241 of 2004) for eviction to obtain possession of the property whereby it was agreed that the applicant pay to the respondent certain money and then keep his property.

However, the applicant failed to comply with the agreement and negotiations fell through. That the applicant had agreed respondent may move into the property, no order should be made to restrain him from entering into his property.

Upon perusing the authorities and the affidavits sworn by both parties, I am of the view that the proposed appeal is frivolous for reasons that there is a consent order which has not been complied with by the applicant.

I therefore dismiss the application. Costs in the cause.

It is so ordered.

DATED, SIGNED and DELIVERED at Nairobi this 17th day of July, 2009.

JOYCE N. KHAMINWA

JUDGE