

JUJA ROAD FANCY STORE LIMITED PLAINTIFF

VERSUS

CFC FINANCIAL SERVICES LIMITEDDEFENDANT

R U L I N G

Notice of Motion dated 7/4/09 brought under **Section 7 Appellate Jurisdiction Act, Cap.9** Laws of Kenya, **Section 75 (1)** and **3A Civil Procedure Code, Order XLII Rule (1) 3, Order XLI Rule 4**. The orders sought time to make application for leave against the order of court made on 6/2/2009 be enlarged, leave be granted to the defendant to appeal against the order of court made on 6/2/2009. And that there be stay of execution pending the hearing and determination of the appeal in the Court of Appeal. The grounds are set out in the application and the affidavit of Jasper Mbuiki in support. Notice of Appeal was filed on 20/2/2009. Leave to appeal was not sought by previous advocates. The applicant has good grounds of appeal.

The application is opposed and replying affidavit is filed sworn by one Nipul Shah and grounds of opposition is also filed. I have perused application and it is clear the applicant has a right to appeal, but with leave of court. The grounds stated to support leave indicates that the issues involved are serious and involves interpretation of statute. It is shown that the previous advocate failed to seek leave to appeal which is normally sought after the ruling is read in court.

This is the practice as provided under **Order XLII (1) (3)** either informally in court or within 14 days from the date of such order. Regarding enlargement of time the court is empowered under **Order 49 Rule 5** whether the time has expired or not to extend time as is reasonable.

I have examined the application and opposition and I am satisfied leave ought to be granted to appeal against the order of this court which I herewith grant. I am also inclined to enlarge time for a further 14 days for that purpose.

On the issue of stay of execution pending appeal to the Court of Appeal, I am not satisfied that a good reason has been shown to warrant a stay. That application is rejected.

The costs of this application is awarded to respondent.

Orders accordingly.

DATED, SIGNED and DELIVERED at Nairobi this 23rd day of October 2009.

JOYCE N. KHAMINWA

JUDGE