



REPUBLIC OF KENYA

HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 546 of 2007

SHALIMA FLOWERS (K) LTD.....APPELLANT

VERSUS

SAMUEL KIDWADI LWOYERO.....RESPONDENT

R U L I N G

This is an application by the appellant seeking orders of stay of execution of the judgment herein pending the hearing and determination of Nairobi High Court Civil Appeal No. 574 of 2007.

The application is based on the grounds that the applicant has filed an appeal against the judgment delivered on 31st May 2007; that the applicant will suffer irreparable loss and damage if stay is not granted and that he is willing to furnish security.

In his memorandum of appeal the appellant sets out the grounds as follows:-

1. That the learned trial magistrate erred in law and in fact in entering judgment awarding high general damages contrary to law.
2. The learned trial magistrate erred in law and fact in disregarding the appellant's submission.
3. The learned trial magistrate erred in not following the law relating to award of general damages.
4. The learned trial magistrate erred in law and fact in not finding that the respondent failed to prove his case on a balance of probability.

Before I proceed further it is appropriate at this stage to refer to the relevant provision of appeal which is Order XLI Rule 4 (1) of the Civil Procedure Rules which provides what should be contained in the Memorandum of Appeal.

And Order XLI Rule 4 (1A) provides

“where no certified copy of the decree or order appealed against is filed with the memorandum of appeal, the appellant shall file such certified copy as soon as possible.....”

Failure to file a certified copy of the order appealed against renders this application incompetent as there is nothing to guide the court to make a decision either way.

For that reason the appellant's Notice of Motion dated 11th July 2007 is dismissed. The appellant is at liberty to file a competent application after complying with the provisions of Order XLI Rule 4 (1A) of the Civil Procedure Rules.

Those are the orders of this court.

Dated at Nairobi this 29th day of February 2008.

J. L. A. OSIEMO

JUDGE