



REPUBLIC OF KENYA

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

Civil Appeal 923 of 2007

JANE WANJIKU NJENGA .....APPELLANT

V E R S U S

NATIONAL BANK OF KENYA LTD.....RESPONDENT

(Appeal from the order dated 1<sup>st</sup> November, 2007 in Milimani CMCC NO. EJ 696 of 2000)

R U L I N G

The Appellant, by amended chamber summons dated 30<sup>th</sup> November, 2007, seeks the main order that there be stay of attachment of her household goods which are in her house, **No.2 KB, JAMUHURI ESTATE, NAIROBI**, pending disposal of the appeal herein. The application is made under Order 41 rule 4(1) of the Civil Procedure Rules (the Rules). It appears that the Appellant lodged objection to attachment of those goods in execution of decree in **Milimani CMCC No. EJ 296 of 2000**, where her estranged husband was the judgment-debtor. The lower court dismissed the objection, and hence the appeal. The appeal was lodged within time.

The Respondent has opposed the application.

I have read the supporting and replying affidavits. I have also given due consideration to the submissions of the learned counsels appearing, including the cases cited.

I am not required in this application to decide whether or not the Appellant has an arguable appeal. She is exercising her undoubted right of appeal. What I am required to do is to make such order as may be just. Being an application for stay of execution, the court must be satisfied that the application was made without unreasonable delay and that the Appellant stands to suffer substantial loss unless stay is granted. The Appellant must also be prepared to give such security as the court may impose for the due performance by the Appellant of any order or decree that may ultimately be binding upon her.

I am satisfied that the present application has been brought without unreasonable delay. It is the Applicant's case that her household goods, which were found in her own house, were not available for attachment in execution of decree against her husband from whom she had been long separated, and with whom she does not live. What I have before me are the handwritten proceedings and ruling of the lower court. I am unable to read them. So I am not quite sure what arguments were made before the lower court, or its findings. If the Appellant was able to establish that the attached goods were her own acquired by herself without the assistance of her estranged husband and found in her own house, a house not shared with the estranged husband, the Appellant may well have a case in urging that those goods were not available for attachment in execution of decree against her husband.

As we all know, household goods take many years to acquire, piece by piece. In time, some of these goods acquire sentimental value. Due to inflation it may be much more expensive to replace such goods. Anyone suffering the loss of all their household goods no doubt suffers substantial loss. I am therefore satisfied that the Appellant stands to suffer substantial loss unless the order sought is granted.

I will therefore allow the application. There shall be stay of any further attachment of the Appellant's household or other goods pending the disposal of the appeal herein. Such stay shall be upon the condition

that the Appellant shall not part with or dispose of the proclaimed goods pending disposal of its appeal or the further order of the court. Costs of this application shall be in the cause. It is so ordered.

**DATED AT NAIROBI THIS 9<sup>TH</sup> DAY OF APRIL, 2008**

**H. P. G. WAWERU**

**J U D G E**

**DELIVERED AT NAIROBI THIS 11<sup>th</sup> DAY OF APRIL, 2008**