



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

OF KISII

Civil Appeal 164 of 2004

KENYA TEA DEVELOPMENT AGENCY APPELLANT

VERSUS

ROBERT OBARE MOSETI RESPONDENT

RULING

The appellant filed an application by way of a notice of motion brought under Order XL1 rule 4 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act.

The application seeks primarily the order that:

“The honourable court be pleased to vary the orders of stay requiring the appellant to release part of the decretal sums to the Respondent and substitute it with an order that the stay of execution is allowed unconditionally, or that the whole decretal amount be deposited in an interest earning account in the joint names of the advocates of the parties, pending the determination of the appeal.”

The application was supported by an affidavit sworn by one Eric Ngeno, an advocate who was then acting for the appellant. The background leading to the application is that in CMCC.NO.675 of 2003 at Kisii, the respondent herein was the plaintiff and judgment was entered in his favour against the appellant in the sum of Kshs.70, 000/= plus costs and interest. The appellant was aggrieved by the judgment and preferred an appeal to this court.

The subordinate court granted conditional stay of execution pending appeal subject to half the decretal amount being paid to the respondent. It was contended that the respondent is a man of straw and may not refund the decretal sum or any part that may be paid to him in the event the appeal is successful.

When the application first came up for hearing on 10th November, 2004, temporary stay of execution of the lower court’s order was granted pending inter partes hearing of the same.

The application came up for hearing on 11th March, 2008. The same was not opposed. I have perused the application and I think the appellant’s fears are well founded. I am of the view that the decretal amount should be deposited in an interest earning account in the joint names of the advocates for the parties herein, pending hearing and determination of the appeal. That should be done within the next thirty (30) days from the date hereof.

Having ordered as above, I must observe that none of the parties have demonstrated any keen interest in expeditious disposal of this simple appeal. Since 22nd June, 2005 when the present application was stood over generally, no action was taken until 14th August 2007 when the appellant's advocate fixed the appeal for directions with a view to getting a hearing date for the application dated 8th November, 2004. In the circumstances, I now direct that the appeal be set down for hearing within the next three (3) months from the date hereof failing which the court will proceed to dismiss it for want of prosecution. I make no orders as to costs of the application.

DATED, SIGNED and DELIVERED at Kisii this 9th day of April, 2008.

D. MUSINGA

JUDGE.

Delivered in open court of the presence:

Mr. Ochwangi holding brief for Mr. Nyachiro for the appellant.

N/A for the respondent.

D. MUSINGA

JUDGE