

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

Civil Appeal 291 of 2004

ANTONY MUTURA NJAU.....APPELLANT

VERSUS

SIMON NJAU and DENNIS ERNEST NJUGUNA

(Minors suing through the next of friend)

FLORENCE WAMBUI NUGUNA..... RESPONDENT

R U L I N G

By a notice of motion dated 20th March, 2007 Anthony Mutura Njau (hereinafter referred to as the appellant) sought to have the firm of Njugi B.G. & Company Advocates granted leave to come on record for him in place of the firm of Wambui Nganga and Company Advocates. The appellant also sought an order for stay of execution of the judgment delivered on 25th March, 2004 by Mr. Biwott RM, in Kiambu Children's Court No. 2 of 2003.

The appellant contends that he has filed an appeal which has a high probability of success. The respondent has now applied for the appellant's committal to civil jail and the appellant therefore contends that unless the order for stay of execution is granted he stands to suffer substantial loss. In support of the application, counsel for the appellant has relied on the following authorities: -

· ***Githunguri vs Jimba Credit Corporation Ltd (2)***

Harbans Sign Soor vs Fatima Ali Mohammed Civil Appeal. No. 120 of 2005.

Kalonde Mbusya vs Martin Kimwele Kikoi & Others Civil application No. 35 of 2005.

The application was opposed on 3 main grounds. First, it was contended that the appellant has not complied with previous conditions given for granting stay of execution. Secondly it was contended that the appellant's application was not brought expeditiously nor has the undue delay been explained. Thirdly it was contended that the applicant has not shown any substantial loss that he is likely to suffer. The case of ***Omar Shariff Abdalla Vs Corporate Insurance Co. Ltd HCCC. (Mombasa) No. 320 of 1998*** was relied upon.

Having considered this application, with regard to the prayer for Njugi B.G. & Co. Advocates to be granted leave to come on record for the appellant, there was no serious objection, and I have no difficulty in granting the prayer. I do note that the first attempt by the appellant to obtain orders of stay of execution of the judgment delivered on 25th March, 2005 was made on the 11th of October, 2005 when a notice of motion under certificate of urgency was filed. That application which was brought more than one year after the orders were made, suffered a technical knockout when it was struck out by Mutungi J. on the 15th March, 2007. It is thereafter that the current application was filed. The appellant has not explained the apparent delay in filing this application. He has not given any explanation as to why it took more than one year for him to make the initial application for stay of execution.

Secondly although the applicant contends that he will suffer substantial loss unless the order of stay of execution is granted, the applicant has not demonstrated the substantial loss that he is likely to suffer. To the contrary, the orders in respect of which stay of execution is sought are orders for maintenance of minor children and staying execution of such orders is likely to be to the detriment of the minors.

The applicant has therefore not satisfied the conditions for granting orders for stay of execution pending appeal as provided under Order XLI Rule 4(2) of the Civil Procedure Rules. Accordingly, his application for orders of stay of execution pending appeal fails and is dismissed in that regard.

Dated and delivered this 26th day of May, 2008

H. M. OKWENGU

JUDGE