



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KISUMU

Civil Appeal 40 of 2008

**PUT SARAJEVO CONSTRUCTION LTD -----
APPLICANT/APPELLANT**

-VERSUS-

MARIKO WANDUGU ODERA ----- RESPONDENT

RULING

Coram J. W. Mwera, Judge,

Ms. Oron for applicant/appellant,

Odhiambo for the respondent,

Raymond CC.

On 28/4/2008 the appellant company prayed this court under S. 3A CPA and O41 r 4 CPR that it issues a temporary stay of execution until the appeal herein is determined.

Ms Oron told the court that the appeal lodged from Bondo court had high chances of success so without the stay order it would be rendered nugatory finally if it succeeds. That phrase appears in the Court of Appeal Rules – not here in the High Court. And that the applicant would deposit the decretal sum as security.

Mr. Gadhia, advocate for the appellant, swore an affidavit in support. In it it was added that the respondent was a person of unknown means. If he gets the decretal sum he will not be able to refund it in case the appeal succeeds.

The replying affidavit was sworn by the respondent on the lines Mr. Odhiambo argued it. That the sum awarded was for special damages. It was a balance due on a contract of lease whereby the appellant leased from the respondent land NO. SIAYA/OMIA MALO/781 at ksh 200,000/=. Ksh 85,000/= was paid and not the balance – hence the suit in the lower which ended in the award of ksh 115,000/=. And that if he could have a property to lease, repaying any sums in this appeal could be assured.

After hearing counsel, and although the applicant seemed to have filed this application without delay and it offered to deposit the decretal sum in court as security, it failed to demonstrate to this court what substantial loss it would suffer in the event that the stay order was not given. That is the core condition that a party must demonstrate, of course, as well as the other two under O41 r. 4 CPR referred as alluded

to above.

The applicant having failed on that score, loses this application with costs.

Delivered on 26.5.2008

J. W. MWERA

JUDGE

JWM/hao