

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Case 611 of 2003

LINDA WATIRI MURIUKI PLAINTIFF

V E R S U S

NEVILLE PATRICK GIBSON WARREN

DANIEL JAMES CORRY McVICKER

HAMISH WOOLER KEITH

ZULFIKAR H. ALIBHAI

(All practising as Advocates under

the firm name of Daly & Figgis, Advocates).....DEFENDANTS

R U L I N G

The present application by the Defendants (by notice of motion dated 11th February, 2008) seeks stay of execution of decree pending appeal under Order 41, rule 4 of the Civil Procedure Rules (the Rules). But there is no decree yet, and none capable of execution can be issued upon the judgement dated and delivered on 14th December, 2007. By that judgement the court merely determined the single issue reserved for it by the consent order entered on 9th January, 2004. That single issue was,

”...whether the terms of the Partnership Deed dated 31st October, 1990 applied to the partnership between the Plaintiff and the Defendants”.

Upon that determination certain consequences would flow in accordance with the other terms of the consent order towards out-of-court settlement of the dispute between the parties. It is only after full settlement of the dispute in terms of the consent order that a decree capable of execution can then issue. That stage has not yet been reached.

The process of out-of-court resolution of the dispute chosen by the parties as per the aforesaid consent order would be frustrated by any order made upon the present application as sought. Such order would, in effect, not stay execution of any decree; as already pointed out, no decree capable of execution can issue upon the judgement of 14th December, 2007. The order would actually stay the further proceedings of out-of-court settlement agreed upon in the consent order of 9th January, 2004.

No order of stay of further proceedings has been sought; what is sought is stay of execution of decree. Even if stay of further proceedings had been sought, I would not grant the same because, as seen above, it would merely frustrate and obstruct the method of settlement of the dispute chosen by the parties themselves.

Having considered all matters placed before the court, I hold that the application is not only misconceived; it also lacks merit and must be refused. It is hereby dismissed with costs to the Plaintiff. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 20TH DAY OF JUNE 2008.

H.P.G. WAWERU

JUDGE

DELIVERED THIS 20TH DAY OF JUNE 2008