

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

Civil Appeal 511 of 2006

JOSEPH KARANJA KANG'ARA.....APPELLANT

VERSUS

GLADYS WAMBUI NDEGWA.....1ST RESPONDENT

BERNARD KIPROTICH.....2ND RESPONDENT

ELIZABETH W. KISILI.....3RD RESPONDENT

R U L I N G

By a notice of motion dated 12th May, 2008, Joseph Karanja Kangara, the appellant herein seeks an order for stay of execution of the judgment delivered on 30th June, 2006 in CMCC No. 353 of 2003 pending the hearing and determination of his appeal.

The appellant has been served with a notice to show cause as to why he should not be arrested and committed to civil jail in execution of the decree. The appellant maintains that unless the orders for stay of execution is granted he will suffer substantial loss as his liberty is at stake. The appellant has offered to deposit part of the decretal sum in court as security.

The respondent objects to the application maintaining that the appellant has not satisfied the conditions for stay of execution as laid down under Order XLI Rule 4 of the Civil Procedure Rules. In particular that the appellant has not demonstrated that the respondents are persons of straw and substantial loss will be suffered. In this regard, the case of ***Lalji Bhimji Sanghani Builders & Contractors Vs Nairobi Golf Hotels Kenya Limited HCCC No. 1900 of 1995*** was relied upon. It is further contended that the application for stay of execution has been brought two years after the appeal was filed and that the inordinate delay has not been explained.

Having considered the application and the contending arguments I am persuaded that no prejudice will be suffered by the respondent if the order for stay of execution is granted provided an appropriate order for security is made.

I therefore make the following orders: -

1. That an order for stay of execution pending appeal shall issue on condition that the appellant shall deposit a sum of Kshs.350,000/= into an interest earning account with a reputable financial institution in the joint names of the parties' advocates within 30 days from the date hereof.
2. That the appellants shall file and serve the record of appeal within 90 days from the date hereof and take all necessary action to promptly prosecute the appeal.
3. That the order for stay of execution shall lapse 12 months from the date hereof unless otherwise extended by this court.

Orders accordingly.

Dated and delivered this 13th day of June, 2008

H. M. OKWENGU

JUDGE

In the presence of: -

Mwaniki for the appellant

Wambua for the 1st respondent