

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

Civil Appeal 64 of 2008

INTERLAND DISTRIBUTORS LTD.....1ST APPELLANT

PETER MUASYA KIITI.....2ND APPELLANT

VERSUS

THE STANDARD LIMITED.....RESPONDENT

R U L I N G

The appellants have moved this court by way of a chamber summons under Order XXI Rule 22 (1) of the Civil Procedure Rules, and Order XLI Rule 4(1) and Section 3A of the Civil Procedure Act. The application seeks several prayers but for the purposes of this ruling the prayer being sought is order for stay of execution of the decree arising out of the judgment delivered in CMCC No. 6149 of 2004 on the 28th of January, 2008, pending the hearing and determination of the appellant's appeal.

The appellants contend that the decretal sum is a colossal amount which if paid may paralyze the appellants' business operations. Pursuant to a court order issued on the 5th of May, 2008, the appellants have provided security by way of deposit of a log-book for motor vehicle Scania 113 Registration No. KAR 797Q with the court. The applicant therefore urges the court to issue the order sought.

For the respondent it is contended that the application before the court is frivolous and only intended to delay or deny the respondent the fruits of his judgment. It was maintained that the appellants have not demonstrated that substantial loss will arise if the orders for stay of execution are not granted. The court was therefore urged to dismiss the application.

Having considered this application, it is evident that the appellants filed an appeal about two weeks after the judgment of which they were aggrieved was delivered. It is considered that the appellants had previously filed an application for stay of execution in the lower court. Now this application was rejected by the lower court just a few days before the appellants filed the current application. I am satisfied that the application for stay of execution has been brought timeously. The judgment subject of the decree sought to be executed is for a sum of Kshs.2,083,846.45. The appellants who dispute the judgment maintain that if they are required to pay this colossal amount, their business operations may be seriously adversely affected. Although this was disputed by the respondent I am satisfied that the appellants' business operation is likely to be affected and the appellants may suffer substantial loss if the decree is executed. The appellant has already provided security for the payment of the decree and in the circumstances I think it is only fair that the order for execution pending appeal be confirmed on the following terms.

1. That the appellants shall file and serve the record of appeal within 90 days from the date hereof.
2. That the appellants shall take all necessary action to prosecute the appeal within 12 months from the date hereof.
3. That in the event that the appeal is not disposed off within 12 months the order for stay of execution shall lapse and the respondent shall be at liberty to execute the decree unless otherwise ordered by this court.

Those shall be the orders of this court.

Dated and delivered this 6th day of June, 2008

H. M. OKWENGU

JUDGE