

REPUBLIC OF KENYA

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

Civil Case 1165 of 2003

JOHN BOSCO NGETA
MAUNDU.....PLAINTIFF/RESPONDENT

VERSUS

WILLIAM WAMBUA KIWIA.....1ST DEFENDANT/APPLICANT

CHARLES MUTUKU.....2ND DEFENDANT/APPLICANT

(Both T/A RONA ENTERPRISES)

BAUMANN'S LIMITED.....3RD DEFENDANT/APPLICANT

THE HONOURABLE ATTORNEY GENERAL.....4TH DEFENDANT/APPLICANT

R U L I N G

By this Notice of Motion the Defendant seeks orders of stay of execution of the judgment and decree of this court dated 10th March 2003 pending review.

In support of the application Charles Mutuku has sworn an affidavit giving grounds.

The facts which gave rise to this application briefly may be stated. The plaintiff filed this suit against the defendants. The suit was heard and both the Plaintiff and the Defendants called witnesses to testify. Judgment was entered against the 1st 2nd and 3rd Defendants on 10th March 2003. This application for stay was filed on 28th September 2005 which was over 2 years after judgment was delivered.

The applicant did not appeal against the judgment but intends to apply for review of the judgment. The principles on which the court grants a stay of execution are well settled. Two conditions have to be satisfied by the applicant: first, it must be shown that the intended appeal is arguable and secondly, it must be shown that if stay is withheld, the appeal will be rendered nugatory and of course the application must be brought without delay.

The judgment in this case was delivered on 10th March 2003 and this application is brought over 2 years later. The applicant never appealed within the statutory period and he does not intend to appeal against the judgment.

I have accordingly considered the facts of this case and applying the principles above, I have not been persuaded that the intended appeal has a probability of success. That being so, the application for stay fails. I do not see how, in the circumstances it would be proper to exercise my discretion to grant this application.

This application for stay therefore, fails and is dismissed with costs.

Dated and delivered at Nairobi this 17th day of October 2008.

J. L. A. OSIEMO

JUDGE