

REPUBLIC OF KENYA

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

Civil Appeal 411 of 2008

CLARA ONDISO OTANGA.....APPLICANT

VERSUS

CO-OPERATIVE BANK OF KENYA.....RESPONDENT

R U L I N G

The applicant, Clara Ondiso Otanga, has lodged an appeal against the order made by the Senior Resident Magistrate on 30th July, 2008 in SPMCC No.1426 of 2006 wherein the magistrate dismissed her objection to attachment of some goods in execution of the decree. By a notice of motion filed on 12th August, 2008, the applicant seeks an order for stay of execution pending appeal. It is the applicant's contention that unless the order of stay is granted, execution will proceed and she will suffer substantial loss as her goods will be sold.

The application is opposed by the decree holder, Cooperative Bank of Kenya Ltd who is the respondent to the application. A replying affidavit has been sworn by Peris Mburu, who is a manager in the risk management department of the respondent. She deposes that the respondent is a stable financial institution having a share capital of over 50 million and can therefore comfortably pay the applicant if she is successful in her appeal.

I have carefully considered this application. Although there is paucity of information, it is evident that the applicant's goods have been attached in execution of the decree and that unless the order of stay of execution is stayed, the goods will be sold. It is clear that the attachment of the goods is the subject of the applicant's appeal and therefore if the goods are sold the substratum of the appeal will be lost. In the circumstances, I find it necessary that the orders of stay of execution are issued. Accordingly, an order of stay of execution pending appeal against the decree in SPMCC No.1426 of 2006 (Milimani) shall issue on the following conditions: -

- (i) That the applicant shall deposit the full decretal amount into court within 15 days from the date hereof.
- (ii) The applicant shall file and serve a record of appeal within 90 days from the date hereof.
- (iii) The applicant shall take all necessary action to facilitate the speedy disposal of the appeal.
- (iv) Costs of the application shall be in the appeal.

Those shall be the orders of this court.

Dated and delivered this 16th day of October, 2008

H. M. OKWENGU

JUDGE

In the presence of: -

Mrs. Mandela for the applicant

Advocate for the respondent absent