

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

Civil Appeal 362 of 2008

STEPHEN NJIHIA MBUGUA.....APPLICANT

VERSUS

NISHA VAN HOEK.....RESPONDENT

R U L I N G

Stephen Njihia Mbugua (hereinafter referred to as the applicant), seeks *inter alia*, an order of stay of execution of the decree arising from the judgment delivered on 11th June, 2008 by the Senior Principal Magistrate Miss Maina. The applicant has lodged an appeal against that judgment and believes that his appeal has high chances of success. The applicant is however apprehensive that unless the order for stay of execution is granted the appeal may be rendered nugatory and he will suffer substantial loss. The applicant intimates that he is willing and ready to offer substantial security.

Nisha Van Hoek, who is the respondent, has filed a replying affidavit contending that the applicant has not established that he will suffer substantial loss in the event that an order for stay of execution is not granted. The respondent maintains that she earns a regular income and is able to pay the decretal sum should that become necessary. In support of this contention, the respondent has exhibited copies of her pay slip showing her net monthly salary at Kshs.204,388/=. The respondent has also annexed a Memorandum and Articles of Associating of a company of which she is a director.

Under Order XLI Rule 4(2) of the Civil Procedure Rules, it is imperative that an applicant for an order for stay of execution pending appeal satisfies the court that substantial loss is likely to result to him if the order for stay of execution is not granted. In this case, the applicant has averred that if the order for stay is not granted, he will suffer substantial loss as his appeal will be rendered nugatory. Apart from the memorandum of appeal, the applicant has not availed a copy of the ruling of the lower court so as to demonstrate to the court his contention that his appeal has high chances of success or in what way the appeal is likely to be rendered nugatory.

The respondent on the other hand, has averred that the appeal is a monetary decree for the sum of Kshs.867,000/= which she is willing and able to refund if required to as she has sufficient resources. The respondent has gone further and exhibited her income. Although the applicant maintains that the respondent has not revealed her corresponding expenditure, or any audited statements of account for the company she is purportedly working for, I am satisfied that the applicant has not shown any good justification as to why the court should doubt the respondent's averments which are on oath. The applicant has provided no evidence to support his apprehension regarding the means of the respondent or the company for which the respondent works. I find that the respondent has sufficiently demonstrated her ability to repay the money. The applicant has totally failed to satisfy this court that he will suffer any substantial loss if the order for stay of execution is not issued. For this reason I find no merit in the application and do accordingly dismiss it with costs.

Those shall be the orders of this court.

Dated and delivered this 3rd day of November, 2008

H. M. OKWENGU

JUDGE

In the presence of: -

Njenga for the applicant

Miss Oduor for the respondent