



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

**Civil Appeal 927 of 2007**

**ELIZABETH NJERI KIAMA.....APPELLANT**

**VERSUS**

**SOUTHERN CREDIT BANKING CORP. LTD.....1<sup>ST</sup> RESPONDENT**

**SAMSON KIAMA MACHARIA.....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

1. Elizabeth Njeri Kiama, the applicant herein, seeks an order for a stay of execution of the decree issued on 9<sup>th</sup> March, 2007 in Milimani CMCC No.1940 of 2003. the background to the application is that Keysian Auctioneers broke into the applicant's premises on the 5<sup>th</sup> June, 2007 and attached her household goods purportedly in execution of the decree issued on 9<sup>th</sup> March, 2007. The applicant who was not a party to the proceedings in Milimani CMCC No.1940 of 2003 filed objection proceedings arising from the attachment of her properties.
2. By a ruling dated 2<sup>nd</sup> November, 2007, the Senior Resident Magistrate, Milimani dismissed the objection proceedings. Being dissatisfied the applicant has lodged an appeal in this court against that ruling.
3. The applicant now contends that unless an order for stay of execution is granted, his household goods attached by the auctioneers will be sold and he will thereby suffer irreparable loss. The applicant further maintains that his appeal which raises serious legal issues will be rendered nugatory.
4. Southern Credit Banking Corporation who is the decree holder in Milimani CMCC No.1940 of 2003 objects to the application contending that the application is incompetent as no appeal has been filed against the decree made on the 9<sup>th</sup> March, 2007. It is further contended that the applicant has not satisfied the requirements of Order XLI Rule 4(2) as the application has been made after unexplained inordinate delay and secondly, the applicant has not demonstrated that substantial loss will result if no order of stay of execution is granted, and thirdly, that no commitment has been made with regard to provision of security.
5. Having carefully considered this application, it is evident that the applicant's appeal which is pending before this court arises from the execution of the decree dated 9<sup>th</sup> March, 2007. The applicant has not appealed against that decree as she is not a party to the proceedings. However, her appeal which is against the order dated 2<sup>nd</sup> November, 2007 dismissing her objection to the attachment of her goods, cannot be divorced from the decree dated 9<sup>th</sup> March, 2007 as the attachment is pursuant to that decree.
6. Indeed, if an order for stay of execution is not granted to the applicant the execution of the decree dated 9<sup>th</sup> March, 2007 will proceed and the applicant's household goods will be sold thereby rendering her appeal nugatory. I am further satisfied that if the applicant's household goods are sold, she will suffer irreparable loss. The applicant has also brought her application without undue delay as the application was brought on 13<sup>th</sup> November, 2007 just about two weeks after her objection was dismissed.

7. For these reasons, I grant the application and issue orders for stay of execution pending the hearing of the applicant's appeal on the following conditions: -

(i) The applicant shall provide a guarantee from a reputable financial institution of Kshs.500,000/= as security to remain in force until the appeal is disposed off.

(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. In the event that the appeal is not disposed off within 12 months from the date hereof, the order for stay of execution shall be discharged.

(iv) Costs of the application shall be in the appeal.

Those shall be the orders of this court.

**Dated and delivered this 19<sup>th</sup> day of December, 2008**

**H. M. OKWENGU**

**JUDGE**

In the presence of: -

Advocate for the appellant absent

Advocate for the respondent absent