



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

**Civil Appeal 529 of 2003**

**NATIONAL BANK OF KENYA LTD..... APPLICANT**

**VERSUS**

**INTERIOR CONTRACT SUPPLIES LTD.....RESPONDENT**

**R U L I N G**

By a notice of motion dated 27<sup>th</sup> October, 2008, brought under Section 3A of the Civil Procedure Act, National Bank of Kenya Ltd the applicant herein seeks orders as follows: -

- (i) That this application be certified urgent and heard ex-parte in the first instance.
- (ii) That there be a stay of attachment/execution of the decree subject-matter of this appeal being a decree made on 7<sup>th</sup> August, 2003 in Milimani Chief Magistrate's Court Criminal Case No.1790 of 2003 pending hearing and determination of this application.
- (iii) That the attachment made on 22<sup>nd</sup> October, 2008 pursuant to an application by the respondent, Interior Contract Supplies Ltd, be lifted and discharged altogether..
- (iv) That costs of this application be provided for.

In the affidavit sworn in support of the application by Mr. Aldrin Ojiambo, counsel for the applicant, counsel explains that the applicant had interim orders for stay of execution pending the hearing of their application. However, the orders expired on 17<sup>th</sup> October, 2008 whilst the ruling for the application was still pending. Consequently the respondent, Interior Contract Supplies Ltd, moved to the lower court to attach the assets of the applicant deposited in a joint interest earning account, through garnishee proceedings. The applicant maintains that the respondent is trying to steal a match on him and preempt the court's ruling. The applicant therefore urged the court to invoke its inherent jurisdiction to preserve the subject matter of the appeal by lifting the attachments made on the joint account.

The application was opposed by the respondent who filed grounds of opposition maintaining *inter alia*, that there was no proper appeal in existence and that the application was misconceived and an abuse of the court process. It is further maintained that the applicant's advocate was served with the respondent's application and garnishee order nisi but took no action. Mr. Mari who appeared for the respondent contended that the interim orders for stay of execution lapsed on the 17<sup>th</sup> October, 2008 and the respondent as a successful litigant had the right to bring his judgment to fruition by applying for attachment.

I have considered the application and the rival arguments which were tendered by both counsels. On the 17<sup>th</sup> September, 2008, this court granted an order for stay of execution for a period of 30 days to enable the applicant take action as may be necessary. That meant that the order for stay of execution was to lapse after 16<sup>th</sup> October, 2008 unless otherwise extended by the court. Although the applicant did file an application seeking *inter alia*, extension of the order for stay of execution of the decree no interim orders were given by the court. Therefore, there was no order barring the respondent from executing the decree during the pendency of the application. Secondly, the applicant's notice of motion dated 25<sup>th</sup> September,

2008 was heard by this court and a ruling delivered on 31<sup>st</sup> October, 2008 dismissing the application. There is therefore no basis for the order for stay of execution which was sought by the applicant. For these reasons, I find that the garnishee proceedings initiated by the respondent in the lower court on the 21<sup>st</sup> October, 2008 and the consequent garnishee order was proper. Accordingly, I find no merit in the notice of motion dated 27<sup>th</sup> October, 2008. I dismiss the motion with costs.

**Dated and delivered this 3<sup>rd</sup> day of December, 2008**

**H. M. OKWENGU**

**JUDGE**

In the presence of: -

Mr. Ojiambo for the appellant

Mr. Mari for the respondent