

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Case 19 of 2008

EBONY DEVELOPMENT COMPANY LTD..... PLAINTIFF

VERSUS

STANDARD CHARTERED BANK LTD.....DEFENDANT

RULING

Notice of Motion dated 09.10.08 seeking orders that status quo be ordered as existing prior to the Ruling of 29.09.08 pending interpartes hearing and that Court grant a stay/injunction against the Defendants pending hearing and determination of an appeal against order made on 29.09.08 subject to reasonable conditions of security. The application is grounded on the grounds stated.

The application is supported by affidavit of Charles Muthami Kiberenge.

A Notice of Appeal is filed and even a copy of Memorandum of Appeal showing the matters complained of. This application is opposed. Jane Chege has filed a Replying Affidavit and has pointed out that the plaintiff company managed by Charles Muthami Kiberenge guaranteed the indebtedness of the said Managing Director (principal debtor). Since filing of this suit neither the Plaintiff nor the principal debtor has made any payment to reduce the indebtedness. The applicant was proposing to dispose of secured property and promising to pay but no payment has been received yet.

I have perused the application and the affidavit filed by both parties. It is my finding that the applicant approaches a Court of equity with unclean hands. He has not made any effort to offer any payments towards the indebtedness.

The Applicant has not demonstrated what substantial loss he is likely to suffer if orders are not granted. No security is offered as required under Order 41 Rule 4.

I find that this Application has no merit and the same is dismissed with costs to the Respondent.

DATED this 1st day of December 2008.

JOYCE N. KHAMINWA

JUDGE