



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

**Civil Case 295 of 2004**

**HON. MARTHA KARUA.....PLAINTIFF**

**VERSUS**

**THE STANDARD LIMITED.....1<sup>ST</sup> DEFENDANT**

**OCHIENG OREYO.....2<sup>ND</sup> DEFENDANT**

**RULING**

Before me is a Notice of Motion application expressed to be brought under Order 41 Rule 4(1) of the Civil Procedure Rules and Section 3A of the Civil Procedure Act seeking orders that the judgment and decree herein dated 4<sup>th</sup> May 2006 be stayed pending the hearing and determination of the intended appeal.

The respondent sued the applicant for damages for defamation and after full trial the respondent was awarded Shs.4,000,000/= general damages, and Shs.500,000/= aggravated damages plus costs. Notice of Appeal was filed on 7<sup>th</sup> May 2006.

The application is premised on the ground that the applicants stand to suffer substantial loss if stay is not granted. The application is also supported by an affidavit sworn by Nelly Matheka in which she avers that if stay is not granted the applicant will suffer substantial loss.

Mr. Saende learned counsel for the applicant submitted that the applicants appeal is arguable. That the sum awarded is substantial and if stay is not granted the respondent may not be in a position to refund the same in the event the appeal succeeds and the applicant will suffer substantial loss. He went on to submit that although the respondent is currently a Member of Parliament and a Minister in the Government, she may have difficulty refunding the said monies given the vicissitudes, vagaries and uncertainties of life.

This is more so since the respondent is a politician and as the current term of Parliament and Government ends in the year 2007, there is no guarantee that she will be re-elected to Parliament and lastly that given the large amount of the judgment, the sum of Shs.4.5 million excluding costs and interest the operations of the defendant may be adversely affected in the event that the decretal sum is ordered to be paid immediately out of the respondent. As a result the applicant stands to suffer irreparable loss and in the event the intended appeal succeeds, it will be rendered nugatory.

Mrs. Ndirangu, learned counsel for the respondent submitted that the intended appeal has no merit and is frivolous as confirmed by the draft memorandum of appeal annexed herein.

This is a money decree and the respondent is entitled to reap the fruits of her judgment. She went on to submit that the respondent is a woman of substance. She is a Member of Parliament and a Government Minister and an advocate of this Honourable Court of long standing and the sum awarded cannot be said to be too large which she cannot be able to refund in the event the intended appeal being successful. Further it was submitted that if the applicants are truly desirous of an expeditious disposal of the intended appeal, they should by now have obtained the proceedings and filed the record of appeal in readiness for the hearing otherwise their allusion to the end of her current term of Parliament is an indication that they intend to procrastinate the matter.

The other ground for stay is that the appeal would be rendered nugatory unless payment of the decretal sum were delayed. It is not normal in money decree for appeal to be rendered nugatory if payment is made. The affidavit in support has not set out any information to show that the appeal will be rendered nugatory.

It is usually a good rule to see if order 41 rule 4 of the Civil Procedure Rules can be substantiated. If there is no evidence of substantial loss to the applicant, it would be a rare case when an appeal would be rendered nugatory by some other event. Substantial loss in its various forms is the cornerstone of granting a stay. That is what has to be prevented. Therefore without the evidence of it, it is difficult to see why the respondent should be kept out of her money. She should be allowed to enjoy the fruits of her judgment.

There is no substance in the application and I would dismiss it with costs.

**DATED** at Nairobi this 23<sup>rd</sup> day of February, 2007.

**J.L.A. OSIEMO**

**JUDGE**