



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU

Civil Case 135 of 2000

HUPHREY GITONGA ASHFORDPLAINTIFF/RESPONDENT

V E R S U S

B.O.G CHUKA HIGH SCHOOL.....DEFENDANT/APPLICANT

R U L I N G

1. The Applicant herein, Board of Governors, Chuka High School by a motion dated 17.4.2007 are seeking orders of stay of execution under Order XLI rule 4(1) of the Civil Procedure Rules. In submissions by its advocate and in the Supporting Affidavit of Arnold Mutegi Njuki sworn on 17.4.2007, it is the Applicant's case that after the judgment against it, the Plaintiff/Respondent proceeded to execution of the decree to the Applicant's detriment. That being a public institution, it would be seriously affected if the execution proceeded as threatened by the Respondent.
2. The Applicant contends further that the process of filing an Appeal has already been commenced as the Notice of Appeal has been lodged and proceedings have been applied for and it would be in the interests of justice to grant the orders sought.
3. Regarding the delay in seeking the orders of stay, blame is placed at the feet of the Office of Attorney General which previously represented the Applicant; that the State Counsel had not taken instructions to seek stay orders pending appeal seriously, to the detriment of the Applicant. The same it is said can be excused and the Applicant is willing to deposit such security as the court may order in terms of order XLI rule 4 of the Civil Procedure Rules.
4. The response by the Respondent as contained in the Replying Affidavit of Humprey Gitonga Ashford sworn on 23.4.23007 and in submissions by his advocate is that there was undue delay in filing the Application for stay of execution as well as the Appeal and that the delay is inordinate and unexplained. That in any event the application has no merit and does not satisfy the conditions set out in the relevant rule and which is invoked in the body of the motion.
5. In support of the contending positions, advocates appearing filed a number of authorities, some useful, some not so useful and I have read them all. My view of the Application before me in light of all matters brought to the fore is that it is merited for the following reasons;
6. Firstly, it has been demonstrated that substantial loss would be occasioned if attachment of school property is undertaken because the disruption to the learning of innocent students would in the end

have a much bigger impact than simple attachment of the assets of a judgment debtor. I am also alive to the fact that the Applicant may have been poorly represented in the case leading to the judgment and decree, the execution of which is being sought to be stayed. This point leads me secondly, to the issue of delay; although it is admitted that there is a measure of delay in filing the Application the same is in my view explained away and the reason is plausible and reasonable. I have said above that the advocate previously acting may have taken a very casual approach to the defence of the Applicant's case, a matter I alluded to in my judgment. Where in certain circumstances an advocate acts without haste and his client suffers, then the consequences of such delay should not be visited on the client. This is one such case and I may only add that since notice of attachment was given, the Applicant has acted with speed and alacrity and should not be penalized because its advocate was otherwise exhibiting a laissez – faire attitude towards his brief.

7. As to the security which this court may choose to impose, I note that the Applicant is a public institution and has been for a long time (I take judicial notice of that fact). I see no danger that it may be wound up or its assets otherwise disposed of as would happen to a private company. I will for that reason alone, make no order that any security be given.
8. In the end, I will allow the Application dated 17.4.2007 but will make no order as to costs
9. Orders accordingly.

Dated signed and delivered this 29th day of May 2007

ISAAC LENAOLA

JUDGE

In presence of

Mr. Riungu Advocate for the Plaintiff

Mr. Mwanzia holding brief for Mr. Nyaga Advocate for the Defendant

ISAAC LENAOLA

JUDGE