



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Case 811 of 2004**

1. Land & Environmental Law Division
  2. Civil Practice & Procedure.
  3. Subject of Main Suit – Nuisance Environment Law.
    - a) Construction of temporary Structures on 1<sup>st</sup> defendant's property
    - b) Protest by Plaintiffs
- prays for injunction for & against a running restaurant.
- c) Injunction granted
4. Application of 8 May 2007
    - a) Stay of Execution on an injunction
  5. In Reply:

According to case law of Consolidated Bank of Kenya  
thers v Usafi Ltd.

C.A. 195/05 (UR 117/2005)

Stay of Execution of injunction not permitted in law.

Held:

6. Application is hereby dismissed.
7. Case Law
8. Advocates

E.N. Mwangi for . Macharia Mwangi & Njeru Co. Advocates for the 1<sup>st</sup> defendant/respondent- present

E.N. Mwangi holding brief for B.W. Milimo for Mose & Mose & Co. Advocates for the 3<sup>rd</sup> defendant/respondent - present

H.R. Namisi for Rikanya & Co. Advocates for 2<sup>nd</sup> defendant /applicant- present

G.N. Gakaria for Rikanya & Co Advocates for 2<sup>nd</sup> defendant/applicant

J.M. Thiga for Waruhiu K'owade & Nganga Advocates for the plaintiff/respondent - present

**ARICA RE-INSURANCE CORPORATION.....PLAINTIFF**

**VERSUS**

**NATIONAL SOCIAL SECURITY FUND BOARD OF TRUSTEE.....1<sup>ST</sup> DEFENDANT**

**PETER K. MURAY & JOAN W. MURAYA**

**t/a PRONTO AGENCIES.....2<sup>ND</sup> DEFENDANT**

**CITY COUNCIL OF NAIROBI.....3<sup>RD</sup> DEFENDANT**

**RULING NO. (2)**

**I. Background to application dated 8 May, 2007 seeking stay of Execution of orders of an Injunction**

1. On the 28.3.2007, this court granted Orders to the Plaintiff against all the defendants except the City Council of Nairobi by way of an injunction restraining the defendants by themselves & or agents from running a restaurant and or any activities on the suit land that may interfere with the environment. I ordered that there be an audit report herein on the suit premises LR 209/1305 that is registered under the name of the 1<sup>st</sup> Defendant.

2. As per my ruling of 28-3-2007 I outlined the facts of this case being that the Plaintiff to the 1<sup>st</sup> Defendant were intending to purchase the suit premises. This agreement was not successful. Instead the 1<sup>st</sup> defendant rented the premises to the 2<sup>nd</sup> Defendant – Kageka Muraya t/a Prontsame agencies. The 2<sup>nd</sup> defendant began to construct buildings that were not commercial friendly. The Plaintiff sued the 1<sup>st</sup> Defendant NSSF and the City Council of Nairobi for an injunction. The court system took so long by the time the matter was reached, the buildings had been completed. I heard the inter parties hearing in 2007 almost 2-3 years later.

3. It is from my orders of an injunction that the application of 8<sup>th</sup> May, 2007 arises.

**II. Application of 8 May, 2007**

4. The applicant prays that I stay the orders of an injunction as the Environmental Act Regulations does not provide for this. That the injunction was issued in error. That the restaurant should not be closed down as the said buildings and land do not fall under the environmental law and thus no audit is necessary.

5. In reply the advocate for the respondent prayed that the application be dismissed. He referred this court to the case law of Consolidated Bank of Kenya & Others v USAFI Ltd. CA 195/05 (UR 117/05) (Omollo, Waki, Deverell JJA) whereby an injunction was sought against the bank in the superior court

(Mutungi J.) the injunction was granted restraining the bank for exercising this statutory power of sale of a property. The bank appealed. The court of Appeal noted that a stay of an injunction is not granted as its effect would be to nullify the injunction. They held that once an injunction has been ordered it is in force and no further proceedings are required to give effect to it.

6. In reply to this the applicants advocate stated that the court of appeal was referring to its own powers.

### III. Findings

6. It is clearly noted that the application for stay of execution of the injunction amounts to reversing this court's orders. I would agree with the case law of Consolidated Bank of Kenya & Others V Usafi Ltd CA 195/05 (UR117/05) and would accordingly dismiss this application with costs to the Defendant/Respondents. The other two defendant/respondent did not oppose the application and order no costs would be given to them.

7. I hereby hold that the court's orders be implemented with the utmost speed. The application to set aside the injunction is hereby dismissed with costs to the Plaintiff/Respondent.

**Dated this 16<sup>th</sup> day of May, 2007 at Nairobi.**

**M.A. Ang'awa**

**JUDGE**

Advocates:

E.N. Mwangi for . Macharia Mwangi & Njeru Co. Advocates for the 1<sup>st</sup> defendant/respondent- present

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H.R. Namisi for Rikanya & Co. Advocates for 2<sup>nd</sup> defendant /applicant- present

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