

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI

CIVIL APPEAL 495 OF 2007

KARIRANA ESTATE LTD.....APPELLANT

VERSUS

KEFA OSEKO ORENGE.....RESPONDENT

RULING

This is an application by the Appellant brought under Order XLI Rule 4 of the Civil Procedure Rules and Section 3A and 63(e) of the Civil Procedure Act seeking orders for stay of proceedings in Limuru Senior Resident Magistrate's Court in Civil Case No.420 of 2004 pending the hearing and determination of the Appeal. The application is based on the grounds as stated on the body of the application as well as the affidavit sworn by Job Kihara on 11th June 2007.

Briefly the facts of this case as gathered from the affidavits are that the suit being SRMCC NO. 420 OF 2004 was scheduled for defence hearing on 5th June 2007 but Mrs. Maureen Onyango who was seized with the matter was summoned to appear before the Court of Appeal for the hearing of **NAIROBI CIVIL APPEAL NO. 139 OF 2006 – REPUBLIC & ANOTHER VS. THE INDUSTRIAL COURT & ANOTHER.**

On 30th May 2007 Mrs. Onyango wrote a letter to Omosa & Co. Advocates informing them that the hearing will not proceed as scheduled as she was engaged in the Court of Appeal and in the circumstances she would apply for adjournment. The letter was copied to the Executive Officer Limuru Law Courts.

But when the matter came up for hearing, application for adjournment was opposed and the trial magistrate refused to grant the adjournment and hence this appeal.

It is the discretion of the court to grant or refused a stay but what has to be judged in every case is whether there are or not particular circumstances in the case to make an order staying execution. The Applicant having been summoned to appear before the Court of Appeal and having taken trouble to write counsel for the Respondent and copied to court; that she would not be available, her application for adjournment ought not to have refused.

I am satisfied that the appeal is an arguable one and the appeal would be rendered nugatory if the order of stay is not granted.

Accordingly the Applicant's Notice of Motion dated 11th June 2007 is allowed and further proceedings in Limuru SRM's CC NO. 420 OF 2004 are stayed pending the hearing and determination of Civil Appeal No.495 of 2007.

Costs of this application will be costs in the Appeal.

Dated and delivered at Nairobi this 25th day of June 2007.

J.L.A. OSIEMO

JUDGE