

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

Civil Appeal 666 of 2006

PETER MUCHIRI.....APPELLANT

VERSUS

CELINICO FLOWERS LTD.....RESPONDENT

RULING

This is the Plaintiff's application for stay of execution under Order XLI Rule 4 and Order XXI Rule 22 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act seeking a stay of execution of the decree and Warrant of Attachment and Sale issued by the Senior Resident Magistrates Court Limuru (A.O Amingo RM) on 14th March 2007.

The facts that led to this suit are that the Plaintiff was employed by the Defendant is a gardener. He had no letter of employment specifying his terms and conditions of employment. According to the Defendant he was classified as a casual labourer. His services were terminated and he was paid his full and final benefits which he received and confirmed in writing. He thereafter brought this suit against the defendant claiming payment for redundancy 3 years, house allowance for 4 years, salary arrears for 15 months, leave allowance for 5 years, leave travel allowance for 4 years. The trial magistrate dismissed the Plaintiff's claim with costs. The Plaintiff's appeal therefrom being Civil appeal No.666 of 2006 has been filed in this court and is pending.

Pending such hearing, a stay is sought. The principles upon which the court can grant a stay are well settled. Two conditions have to be satisfied by the Applicant: first it must be shown that the intended appeal is arguable and secondly, it must also be shown that if stay is withheld, the appeal will be rendered nugatory.

I have accordingly considered the facts of this case and applying the principles above stated, I have not been persuaded that the intended appeal has a probability of success. That being so I do not see how in the circumstances, it would be proper to exercise my discretion in favour of the applicant.

This application for stay therefore, fails and it is dismissed with costs.

Dated and delivered at Nairobi this 19th day of July 2007.

J.L.A. OSIEMO

JUDGE