

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

Civil Appeal 57 of 2007

SIEMENS POWER TRANSMISSION AND DISTRIBUTION LTD.....APPELLANT

V E R S U S

MUSILA KITHUKURESPONDENT

R U L I N G

I have before me an application by notice of motion dated 16th February, 2007 brought under Order 41, rule 4 of the Civil Procedure Rules (the Rules). It seeks stay of execution of the lower court decree passed on 22nd December, 2006 pending hearing and determination of the appeal herein. The application is opposed by the Respondent.

I have considered the submissions of the learned counsels appearing, including the one case cited. I have also read the supporting and replying affidavits. Stay of execution of decree pending appeal will be granted for sufficient cause, but only if the court is satisfied that substantial loss may result to the applicant unless the order is made, and that the application has been made without unreasonable delay. The applicant must also give such security as the court may order for the due performance by him of such decree or order as may ultimately be binding on him. See sub-rule (2) of the same rule. It has not been pleaded in the grounds on the face of the application or in the supporting affidavit that the appellant stands to suffer substantial loss if the order of stay sought is not granted.

It was incumbent upon the Appellant to plead and establish by evidence that it stands to suffer substantial loss unless the order of stay of execution is granted. It has neither pleaded nor attempted to show substantial loss. That being the case, the court is unable to exercise its discretion in the Appellant's favour. I must therefore refuse the application. It is hereby dismissed with costs to the Respondent. Order accordingly.

DATED AT NAIROBI THIS 20TH DAY OF AUGUST, 2007

H. P. G. WAWERU

J U D G E

DELIVERED THIS 24th DAY OF AUGUST, 2007