

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CIVIL APPEAL 33 OF 2004

JULIUS MBITI M'IKIOME PLAINTIFF

VERSUS

JOSEPH NTIKA KAUA DEFENDANT

RULING

This is an application by way of chamber summons seeking that execution in Maua PMCC No. 146 of 2000 be stayed pending the determination of an appeal filed by the applicant. The applicant's suit in the court below was dismissed with costs on 13th May 2004.

Being dissatisfied with this he filed this appeal. In the meantime, the respondent proceeded to have the bill of costs taxed. The applicant is now faced with a notice to show cause why execution should not proceed. It is his contention that his appeal has high chances of success and should the court not grant an order of stay the appeal will be rendered nugatory and he shall suffer loss.

In response, the respondent argues that the suit was dismissed way back in 2004 and thereafter the applicant filed this appeal. That the applicant has not taken any steps to prosecute the appeal. It is further submitted that the applicant has not complied with the requirements for the grant of orders of stay.

Starting from this last point, the broad issue to be determined is whether the applicant has complied with the provisions of order 41 Rule 4 of the Civil Procedure Rules which sets out 3 conditions for the grant of stay of execution. Has the applicant demonstrated that he will suffer substantial loss if the order is not granted? Has he brought the application without unreasonable delay? And has he made an offer as to security?

The bill of costs has been taxed at Kshs. 19,832 together with interests and costs amounting to Kshs. 21,332/=. It was incumbent upon the applicant to show that if he paid over this sum, he would suffer substantial loss. This he has failed to do.

Secondly, the case was dismissed way back in 2004. The applicant promptly filed this appeal but went to sleep until he was faced with the threat to execute, when he woke up and brought this application. The delay of almost 3 years is clearly inordinate and unreasonable. Finally, the applicant has not made any offer as to security. For these reasons, this application fails and is dismissed with costs to the respondent.

Dated and delivered at Meru this 21st Day of September, 2007

WILLIAM OUKO

JUDGE