

REPUBLIC OF KENYA
E HIGH COURT OF KENYA

AT ELDORET

Civil Appeal 43 of 2007

JEFFERSON MUSAU:.....APPELLANT

VERSUS

PATRICK MWANGI T/A TUEMA AGENCIES:.....RESPONDENT

R U L I N G

Before me is an application under Order 41 Rule 4 (1) CPR seeking for an order of stay of execution of Eldoret CM.CC.NO.150 of 2006 until this appeal is heard and determined.

The appellant/applicant had been sued by the respondent in the lower court claiming Shs.56, 000/=. Apparently no defence was filed and ex-parte judgment was entered in favour of the respondent. The appellant later applied to have the judgment set aside and he be allowed to defend the suit. In his ruling dated 27th March 2007 the court dismissed the application and hence this appeal.

Mr. Mutei for the appellant/applicant told court that the applicants appeal has high chances of success.

Mr. Cheluget opposed the application and said appeal had no chances of success as applicant admitted the claim. He said the application is only meant to delay the finalization of the matter.

I have considered the application and the rival submissions. Proceedings of the lower court were not annexed but it seems bone of contention was whether appellant should have been allowed to defend the suit or not. He is said to have admitted the claim but Mr. Mutei explained that that was after he had been arrested and was asked to show cause. This is an issue which can be canvassed during the appeal. Thus though this is a money decree I feel it would be fair and just to stay the execution until the appeal is heard and determined. No prejudice will be suffered by the respondent.

In the circumstances I allow the application and order that there be stay of execution of Eldoret CM.CC.NO.150 OF 2006 until the appeal is heard and determined on condition that the appellant deposit the decretal amount in an interest earning account in the joint names of both counsels within 14 days.

Costs of this application will be in the appeal.

Dated and Delivered at Eldoret this 25th day of October, 2007.

KABURU BAUNI

JUDGE

IN THE PRESENCE OF:-

C/C - David

Ms. Wachuka for Mutei for Applicant

N/A for Responent.