

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Civil Appeal 114 of 2006

LOCHAB BROTHERS LTD:.....APPELLANT

VERSUS

LILIAN MUMBI NGANGA:.....1ST RESPONDENT

MOSES NYONGESA:.....2ND RESPONDENT

MARY MWAURA:.....3RD RESPONDENT

RULING

The appellant/applicant had filed an application dated 14th May 2007 seeking the court to vary and set aside an order made by the trial court to the effect that the appellant do deposit the decretal sum in an interest earning account as a condition of stay of execution. The court heard that application and dismissed the same. The current application seeks court to review those orders and allow the applicant banker to issue a bank guarantee as security in place of depositing cash.

Mr. Kigamwa prosecuted the application on behalf of Mr. Andambi while Mr. Kimani appeared for the respondent and opposed the application. I have considered their submissions and the application. I do concur with Mr. Kimani that as far as the application seeks court to review its orders is not proper. The applicant had sought court to set aside the trial courts order to deposit cash. That application was dismissed. The applicant wanted to be allowed to deposit a log book instead. In that application there was no mention of a bankers guarantee. The prayers in this application are totally new and were not subject to the earlier application which was dismissed.

However the above aside, it is clear that the applicant has been seeking to be allowed a stay of execution without depositing the decretal amount. Deposit of decretal sum or any other security is to ensure that in case of an appeal not succeeding the respondent can realize his judgment. Conditions are not set as a punishment to the appellant. I do concur with Mr. Kigamwa that bank guarantee is as good as depositing money. Once a bank has bound itself to pay a particular amount if called to then it has to do so. I will therefore grant an order of stay on condition that the appellant deposit a bank guarantee for the decretal sum within the next 15 days. The said guarantee must be specific that it will be in force until the appeal is head and determined regardless of the time it takes. The Deputy Registrar to scrutinize the guarantee and satisfy herself that it is proper.

The applicant will however pay the respondent the costs of this application which the court assess as Shs.3000/= to be paid within 15 days.

Dated and Delivered at Eldoret on 23rd October 2007.

KABURU BAUNI

JUDGE