

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
Civil Case 65 of 1997

KIBITA KIBOTHO.....PLAINTIFF

VERSUS

ELIAS NJAGI NJOKA.....1ST DEFENDANT

PHILIS MICERE KIBUTA.....2ND DEFENDANT

RULING

I have considered the submissions on both sides. The applicant seeks stay of Execution Order 41 Rule 4 (2) requires that the application should be filed without unreasonable delay. At the time of Judgment the Applicant had an advocate acting for him. Application for stay should have been made orally in court under rule 4 (3) or a formal application be made without delay. As it is the Applicant did not make any application until he had appointed another advocate. I find unreasonable delay. The court of Appeal rules has set the time within which to file appeal. That time is long past. It appears that no substantial loss is proved because it is said the applicant has now been chased out of the land.

I find no loss that would be suffered by the registration of title in the Respondent. In case of success of appeal the process can be reversed. On the issue of Security the rule is clear in all cases security must be given not necessarily in terms of money but value. The applicant is offering no security.

In view of the delay occasioned in bringing this application, I am not satisfied that the requirements under order 4 CPC have been complied with. I hereby dismiss the application with costs to the Respondents.

Dated this 5th October, 2007.

J. N. KHAMINWA

JUDGE