

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL DIVISION, MILIMANI

Civil Case 1334 of 2001

CMC HOLDINGS LIMITED.....PLAINTIFF

VERSUS

PHARES OLUOCH KANINDO.....DEFENDANT

AND

PAMELA TAABU OLUOCH & 5 OTHERS.....OBJECTORS

R U L I N G

In a ruling dated and delivered on the 27th June, 2005 this court (Njagi, J.) allowed in part the applications of some of the Objectors under rules 56 and 57 of Order 21 of the Civil Procedure Rules (hereinafter called the "Rules") while dismissing outright others. The Objectors have now come back to court by notice of motion dated 15th July, 2005 brought under Order 41, rule 4 of the Rules seeking in essence stay of sale of the attached goods pending hearing and determination of an intended appeal against the said ruling. The Objectors duly lodged a notice of appeal dated 8th July, 2005 under the Court of Appeal Rules. The grounds for the application are that the Objectors have an arguable appeal with high chances of success and that if the attached goods are sold they will suffer irreparable loss. The attached goods are essentially household appliances and furniture.

The Plaintiff/Decree-Holder has opposed the application as set out in the replying affidavit sworn by its Credit Manager, one DAVID NG'ANG'A, on 16th November, 2005. The gist of that affidavit is that the Plaintiff is an old public company with a healthy balance sheet capable of refunding to the Objectors any sum of money recovered from sale of the attached goods should they succeed in their appeal; therefore, the Objectors do not stand to suffer substantial loss.

I have considered the submissions of the learned counsels appearing. The Objectors have an undoubted right of appeal. See Order 42, rule 1(1)(n) of the Rules. In this application they must show under rule 4 of Order 41 that there is sufficient cause to grant the stay sought. They must also show that they will suffer substantial loss unless stay is granted and that the application has been made without unreasonable delay. They must also be prepared to give such security as the court may order for the due performance of such order as may ultimately be binding on them.

From the submissions of their learned counsel, the Objectors concede that the attached goods are not of any great monetary value. They urge, however, that the attached goods are of great sentimental value to them, particularly the furniture, some of which they say are not available in the market today. It was not specified which of the attached goods these ones might be. Nor was it claimed that those items are antiques or otherwise special in any way. It was not even suggested that the same were special gifts from special friends or relatives to warrant any special attachment to them. I do not think that any sufficient cause has been shown by the Objectors why the stay sought should be granted. I am also not satisfied that they stand to suffer substantial loss unless the order is granted.

In the event therefore I find no merit in this application. It is hereby dismissed with costs to the Plaintiff/Decree-Holder. Order accordingly.

DATED AND SIGNED AT NAIROBI THIS 24TH DAY OF JANUARY, 2006.

H.P.G. WAWERU

JUDGE

DELIVERED THIS 27TH DAY OF JANUARY, 2006.