



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Appeal 769 of 2005**

**KESHRA KANJI & SONS LTD..... PLAINTIFFS**

**VERSUS**

**CAROLINE KANUTHU KANIU**

**GEORGE NJUGUNA GITAU..... RESPONDENT**

**R U L I N G**

On 28/11/05, the appellant/applicant moved to this court, seeking: Stay of execution pending appeal; permission to deposit security, pending the appeal. The application is under Order 41 Rule 4 of the Civil Procedure Rules and is supported by an Affidavit by Joram Marenya and Kevin Mogeni, of even date, and on the following grounds: the appeal will be rendered nugatory if stay is not granted; the appellant will suffer substantial loss if execution is not stayed; appellant offers to provide such security as the court may deem just, including deposit in court of Insurance Bond, for due performance.

In opposition, the Respondent's Replying Affidavit, dated 2/12/05, avers that she is well resourced to repay the decretal sum should the appeal succeed against her; and no substantial loss would be suffered by the appellant.

I have carefully gone through the pleadings and the submissions of counsel for both sides and have reached the following findings and conclusions: The stay application is under Order 41 rule 4 of the Civil Procedure Rules, wherein the requisite conditions are spelt out. Looking at those conditions, execution will only be denied the Respondent if applicant/appellant satisfies this court that if the decretal sum is paid prior to the appeal, the same will have been put beyond the appellant's reach because the Respondent is not a person of means to refund the money.

In the Respondent's Replying affidavit, she has shown her income and assets, which have not been challenged at all by the appellant/applicant.

The fact or idea that this is a test case has not been established before me. I am only confined to the application before me, and the issues of other cases will be dealt with as, and when, they are brought forward to this court.

I hold that no substantial loss has been shown that appellant would suffer if the stay is not granted.

In an application of this nature, it must always be kept in mind that a successful litigant should not be kept away from enjoying the fruits of her successful litigation without good cause being shown. That is the genesis of the provisions of Order 41 Rule 4, especially Rule 4 (2) (a), which must be met for the stay of execution to issue.

Here, appellant has not met those tenets.

Accordingly, the application is dismissed, with costs to the Respondent, and against the applicant/appellant.

It is so ordered.

DATED and delivered in Nairobi this 30th Day of May, 2006.

**O.K. MUTUNGI**

JUDGE