



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Appeal 176 of 2005

JOHN MARK OBURE..... APPELLANT

VERSUS

FIDELITY SECURITY LIMITED..... RESPONDENT

RULING

On 10/11/05, the applicant herein moved to this court, under Order 41 rule 4 (1) & (2) of the Civil Procedure Rules seeking orders that:

- 1. The orders for stay of execution granted by the Subordinate Court, Milimani Commercial Courts, on 2/6/05 be set aside or vacated.**
- 2. Costs to be borne by the Appellant/Respondent**

The grounds in support of the application are briefly that the stay orders were on condition that the appellant deposits in court, as security, a title deed or a logbook to be approved by the court, for the due performance of the Decree. The decretal sum as entered on 3/3/05 is K.Shs.941,544/-. The Respondent deposited a logbook for vehicle KAC 700S, upon whose search, the vehicle was found to be a depreciating asset, which was still in use and or control of the Appellant/Respondent, and hence its value will have depreciated by the time the appeal is finalized. The value of the vehicle is much below the decretal sum and not a sufficient security. Further, the logbook deposited was subject to court's approval and that had not been approved by the date of the application herein.

In opposition the Respondent avers that the application is an abuse of the court process; that the issues raised can only be raised before the Lower Court which gave the orders complained of; that conditions which were set by the lower court for the grant of stay order have been fully met, and that no good grounds have been given to warrant interference with the orders of the lower court.

Upon close perusal of the pleadings herein and the submissions by counsel for both sides, I have reached the following findings and conclusions:

The Lower Court's conditions upon which it granted the stay of execution orders have not been met. Whereas the appellant was given an option of depositing a title deed or a logbook, the latter option was adopted that was subject to approval of the court. To date there is no evidence of such court approval.

Of even greater importance is the fact that such security as was given, even if the court had approved the same, (which was not the case) is a very unreliable security. The vehicle could be, lost, since it is still in

the Respondent's use, though any cause and in the absence of evidence for comprehensive Insurance of the said vehicle, the court and the applicant would be left with an empty shell in the form of a logbook. I believe that is the main reason why the court approval was required to avoid the situation I have stated above.

Accordingly, and in exercise of the supervisory power of this court, I order as under:

(a) (i) the appellant/Respondent to deposit the

Title Deed or

(ii) the appellant do deposit the total decretal sum of K.Shs.941,544/- with the court, within the next 14 days from today.

In default, the stay order herein stands vacated and execution to issue.

(b) Courts orders must be obeyed to the letter or this society will be thrown into anarchy and the rule of law will be a mere slogan.

(c) Appellant/Respondent to bear the costs of this application.

DATED and delivered in Nairobi, this 21st Day of June, 2006.

O.K. MUTUNGI

JUDGE