



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**

**(MILIMANI COMMERCIAL COURTS)**

**Civil Case 737 of 2003**

**CO-OPERATIVE BANK OF KENYA.....PLAINTIFF**

**VERSUS**

**VICTORIA INSURANCE BROKERS LIMITED.....DEFENDANT**

**R U L I N G**

This Chamber Summons has been brought under Order XX1 rule 22 Order XL1 rule 4 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act for primarily stay of execution pending the hearing and determination of an appeal against the orders of the Deputy Registrar dated 19.5.2006. The application is based on the following grounds:-

- 1) That the applicant is aggrieved by the Orders of the Deputy Registrar and has appealed against the same.**
- 2) That the decree holder has (indicated) commenced the process of committing the applicant to civil jail.**
- 3) That unless the orders of stay are granted the applicant will be jailed before the hearing and determination of his appeal rendering the same nugatory.**
- 4) That the applicant stands to suffer irreparably.**

The applicant further relies on a replying affidavit sworn on 10.4.2006.

I have not been able to see how Order XX1 Rule 22 of the Civil Procedure Rules is applicable to this application. The application should therefore be determined under Order XL1 Rule 4 of the Civil Procedure Rules which has also been invoked. The grounds upon which an application for stay of execution of a decree can be sought are stated in the said order. Sub rule (1) of the said Order requires the applicant to show sufficient cause and Subrule (2) requires the applicant to

- (a) establish that substantial loss may result to him unless stay is granted;**
- (b) show that the application has been made without undue delay**
- (c) provide security.**

With regard to delay, it is noted that the order appealed from was given on 19.5.2006 and this application was lodged in court on 5/6/06 slightly over 2 weeks later. The delay involved is therefore in my view not unreasonable.

The other requirement the applicant had to establish is that substantial loss would result to him unless the order of stay of execution is made. The applicant will be arrested and committed to civil jail unless a stay is ordered. This event is what the applicant seeks to avoid in the appeal. It is obvious therefore that the appeal will be rendered nugatory unless stay of execution is granted. However, that is not the end of the story, the applicant had still to give security for the due performance of the decree as the decree is not challenged at this stage. It should be noted that for an applicant to avail himself of an order of stay under Order XL1 Rule 4 all the requirements set therein must be established. The applicant has failed to give security. However, the court still has a discretion to order the furnishing of such security for the due performance of the decree as may ultimately be binding on him. In the premises I order that there may be stay of execution of the Deputy Registrar's order if the applicant deposits a banker's bond or guarantee for the sum in the decree from a reputable bank or financial institution within the next 14 days failing which the order of stay of execution will cease to have effect.

The applicant will bear the costs of this application.

Orders accordingly.

**DATED and DELIVERED at NAIROBI this 31<sup>st</sup> day of July, 2006.**

**F. AZANGALALA**

**JUDGE**

**31/7/2006**

Read in the presence of:-