



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

**Civil Case 1644 of 2001**

**WILLIAM MANYONYI KHAMASI.....1<sup>ST</sup>  
PLAINTIFF**

**LEONIDA JUDITH KHAMISI.....2<sup>ND</sup>  
PLAINTIFF**

**VERSUS**

**HOUSING FINANCE COMPANY OF KENYA LTD.....  
.....RESPONDENT**

**RULING**

The applicant by way of this Notice of Motion dated 22<sup>nd</sup> March 2006 and expressed to be brought under Order XLI Rule (1) of the civil Procedure Rules and Section 3A of the Civil Procedure Act seeks orders that there be a stay of execution of the decree for costs pending the hearing and determination of the intended appeal against the judgment of 24<sup>th</sup> February 2004.

The application is based on the grounds that the plaintiffs filed a Notice of Appeal against the decision of 24<sup>th</sup> February 2006 and applied for certified copy of proceedings so as to prepare its appeal, that the plaintiffs have arguable appeal with good chances of success and that the plaintiffs undertake to give security for costs required to demonstrate their bonafides.

The application is opposed on the ground that what was sought by the applicants was permanent injunction which was refused in the Judgment dated 24<sup>th</sup> February 2004. A similar application was made before this court which was refused on 16<sup>th</sup> February 2006.

After the applicants claim was dismissed party and party costs were taxed at Shs.96,240/= and a Certificate of Taxation issued. Judgment was delivered on 24<sup>th</sup> February 2004 and no appeal has been filed to date.

The applicant had secured a loan from the respondent and offered as security LR NO. NAIROBI/BLOCK 82/767. He defaulted and the respondent issued notice to realize the security. He filed the suit for orders of injunction to restrain the respondent from realizing the security. The application was dismissed. The issue now is the taxed costs.

The intended appeal has no chances of success since the security has already been realized.

The application is dismissed with costs.

Dated and delivered at Nairobi this 10<sup>th</sup> day of July 2006.

**J.L.A. OSIEMO**

**JUDGE**