

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA
Civil Case 234 of 1999

SOUTHERN CREDIT BANKING CORP. LTD.PLAINTIFF

VERSUS

PETER KINYUA MUCHENDU T/A KINYUA & CO. AUCTIONEERS.....DEFENDANT

R U L I N G

By a motion filed under Order XX rule 16 and Order XXI 22(1) Peter Kinyua Muchendu T/A Kinyua & co. Auctioneers prayed for an order of stay of Execution of the decree. He also sought for the notice to show cause order of 6.8.2004 to be kept in abeyance pending the giving of accounts of how much was realized on the sale of Motor vehicle registration K.A.H. 340 R.

The Respondent, south Banking Corporation Limited objected to the application. What provoked the filing of this motion is the notice to show cause served upon the applicant dated 8th August 2004 in which the applicant was told to pay a sum of Kshs.1,731,126/60 and in default show cause why he should not be put in civil jail.

It is the argument of Mr. Ouma advocate for the applicant that it is necessary for the Respondent to provide accounts of how much was realized from the sale of Motor vehicle registration KAH 340R before the notice to show cause can be dealt with, hence a stay of execution should be given.

On its part, the Respondent is of the view that the application is wrongly premised in that order XX rule 16 only relates to decrees or judgments in respect of accounts.

I have considered the arguments for and against the motion. I have also perused the facts deponed on affidavits in support and against the motion. It is clear in my mind that the reasons advanced in support of the motion are actually grounds in response to the notice to show cause. The provisions of the law cited do not apply to the application now before this court. Let the applicant raise the issues he is now telling this court before the court dealing with the notice to show cause dated 8th August 2004. Consequently the motion is ordered dismissed with costs to the Respondent.

Dated and delivered at Mombasa this 4th day of October, 2006.

J.K. SERGON

J U D G E