



REPUBLIC OF KENYA

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

**Civil Appeal 415 of 2005**

**PRINISA TRADING COMPANY ..... 1<sup>ST</sup> APPELLANT**

**HANJEKAS LAUNDRY ..... 2<sup>ND</sup> APPELLANT**

**VERSUS**

**KIAKIDI COMPANY LIMITED..... RESPONDENT**

**RULING**

The Chamber Summons herein dated and filed on 22/9/05, under Order 41 Rule 4 of the Civil Procedure Rules seeks the following orders:

- 1. Already spent.**
- 2. Stay of execution of the Business Premises Tribunal Order, dated 16/6/05, pending appeal.**
- 3. That the warrant of attachment issued on 14/8/05 against the applicants in RTC No. 24 of 2005 be lifted.**

The application is supported by the affidavits of E. Kamau & D. Thakkar, and is on the grounds *inter-alia*, that

- a) there is no judgment or decree for the sum claimed of K.Shs.278,950/= and K.Shs.50,050/= respectively**
- b) the warrant of attachment issued in RTC No. 24 of 2005 on 4/8/05 was irregular,**
- c) applicants will suffer substantial loss if execution takes place before the determination of the appeal herein;**
- d) 1<sup>st</sup> applicant prepared to deposit the amount claimed as security pending the determination of the appeal while the 2<sup>nd</sup> applicant has already paid a substantial sum to the Respondent.**

In opposition, the Respondent avers, *inter alia*, that; the appeal has never been served on the Respondents advocate to date; that the applicants filed an application for Review in the Tribunal, without disclosing that to the Tribunal that they had filed an appeal; that the review application was dismissed by the Tribunal; that the applicants will not suffer any substantial loss as this is a money decree; that none of the issues in this application have been raised in the grounds of appeal; that it is true that the 2<sup>nd</sup> applicant

has paid all, but only K.Shs.4,000/= of the money claimed by the Respondent; that the application is an effort to deny the Respondent the enjoyment of the fruits of its judgment.

Having closely and carefully considered the pleadings and submissions herein, I have reached the following findings and conclusions.

Order 41 Rule 4 of the Civil Procedure Rules, under which this application is brought, has specific tenets to be met by an applicant prior to a grant of stay of execution pending appeal. Those conditions include evidence that the application has been made without delay; that the applicant has an arguable appeal (case) or the appeal has high chances of success; that unless execution awaits the determination of the appeal the appellant would suffer substantial loss; offer of such security as the court may order.

From the record before me in this application, including the Memorandum of Appeal, dated 20/6/05 and filed on the same date, I am satisfied that the applicants/appellants have clearly satisfied all including one contested tenet. That condition is the one on substantial loss likely to be suffered if this application is not granted. Substantial loss is demonstrated by evidence that if the decretal sum is paid to the Respondent before the appeal, and the appeal is successful, the same would have been put beyond the reach of the appellants. The same has been captured by evidence that the Respondent is not a person of means.

In the present case, the Respondent is a limited company, and from the record before me, the only known asset, in the name of the Respondent, is a parcel of land, L.R. No.209/2797, Ngariama Road, which the Respondent has already sold. That evidence, from the appellants/applicants annexures, attached to their Supporting Affidavit, has not been controverted. Accordingly, there is good and just cause to deny the Respondent the enjoyment of the fruits of its decision by the Tribunal, until the appeal herein is heard and finally determined in the appeal herein.

All in all therefore, the Chamber Summons herein is granted and I grant the following orders:

- a) A stay of the execution of the order of Business Premises Tribunal, dated 16/6/2005, pending appeal, on condition that the 1<sup>st</sup> appellant/applicant deposits the amount in this Court, as security, within the next 30 days from today.**
- b) An order lifting the warrant of attachment issued on 4/8/2005 against the applicants in RTC No. 24 of 2005.**

Since no costs were prayed for in this application, I grant none.

**DATED** and delivered in Nairobi this 13<sup>th</sup> Day of December, 2006.

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**O.K. MUTUNGI**

**JUDGE**