

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Case 1100 of 2000

FINA BANK LIMITEDPLAINTIFF

VERSUS

ANIL MOHANLAL CHANDARANA1ST DEFENDANT

MIRA ANIL CHANDARANA2ND DEFENDANT

RULING

The Plaintiff has moved by way of mention and by what the advocate stated that is Order XX Rule 7(2) of the Civil Procedure Rules. This court heard this case and delivered its judgement on 11th November, 2004 whereby the Plaintiff's suit as against the Defendant was dismissed. The Plaintiff by Notice of Motion dated 25th April, 2006 sought stay of execution for the taxed costs pending appeal. The court delivered a ruling in that respect on 16th June, 2006. In the drafting of the order that is the expression of that ruling the parties have disagreed and hence why this matter was referred to the court to settle the terms of the order. Although the Plaintiff moved under Order XX Rule 7(2), the court is of the view that that rule refers to a decree. A decree is not an order. However, even if it is not a decree the court is not powerless to settle the terms of the order as set by the Plaintiff under inherent power of the court. The disagreement with the parties is that the Defendants are of the view that this court did not grant the Plaintiff stay of execution.

I have had an opportunity once again to read the ruling delivered on 16th June, 2006 and I am able to confirm that this court did order stay pending appeal. It is pertinent perhaps to quote a sentence of that ruling as follows:-

“To ensure that that balance is achieved it is necessary, in ordering stay, that the plaintiff does give security to the defendants”.

The court does not accept the argument of the Defendants that this court did not grant stay simply because in the summary of its ruling it did not repeat that stay had been granted. The court also does not accept that in settling the terms of the order as sought by the Plaintiff is reviewing the ruling of 16th June, 2006. The Defendants if they are of the view that there are certain errors in that ruling ought to appropriately move this court. In order to correctly reflect the ruling of the court it is essential that the whole ruling is considered when an order is being extracted. A party cannot choose to pay regard to certain portions of the ruling and to exclude other portions. For that reason the correct order that ought to be extracted from the ruling of this court of 16th June, 2006 should be in the following terms:-

1. ***THAT there be a stay of execution pending the hearing and determination of an Appeal preferred by the Plaintiff against the Judgement herein.***
2. ***THAT an Account be opened at any of the Plaintiff's branches which shall be in joint names of all three Advocates hereof, that is, KIPKORIR, TITOO & KIARA ADVOCATES, DESAI, SARVIA & PALLAN ADVOCATES and HARIT SHETH ADVOCATES to deposit Kshs.2,842,649.80 in an interest earning account pending the Plaintiff's Appeal.***
3. ***THAT the costs of the Notice of Motion dated 25th April, 2006 shall abide with the Plaintiff's appeal.***

MARY KASANGO

JUDGE

Dated and delivered this 7th December, 2006.

MARY KASANGO

JUDGE