

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Misc Civil Appli 621 of 2000

SAMUEL MUCHIRI W'NJUGUNA AND 6 OTHERS.....RESPONDENT/APPLICANT

VERSUS

MINISTER OF AGRICULTURE.....OBJECTOR/APPLICANT

RULING

There are two applications before me filed by the 1st and 2nd interested parties respectively seeking stay of execution of the certificate of costs issued herein pending the hearing of an appeal against the decision of the Taxing Master on the Bill of Costs taxed. The criteria for granting a stay are contained in O41 r 4 (1) and (2) and are referred to in the case of **Vishram Ravji Halal & Anor. Vs Thornton & Turpin Ltd C.A No. 15 of 1990.**

The Chamber summons of the 1st interested party did not refer to O41 but under OL r 12 I do not find that this omission is fatal. It is supported by the affidavit of Mr. Raiji in which he refers to the Bill of Costs being taxed in the sum of Kshs 20,161,520.00 and attacks this award and says his client is dissatisfied and wants to appeal.

The Chamber Summons of the 2nd interested party is supported by the affidavit of Mr. Meso, State Counsel. In paragraph 8 he depones that the amount taxed is colossal and the objector is apprehensive that he may not recover the same in the event of the application being allowed. This refers to an application to execute.

In response the 1st Applicant has sworn an affidavit setting out the value of his property said to be worth more than One Hundred Million. I note that there are no affidavits filed by the other six Applicants.

It is not for me to say whether an appeal against the decision of the taxing matter will succeed or not, however, I am of the view that the taxed costs being a very large sum, this is a matter which I will take into account in considering the justice of the matter. This is sufficient cause to consider granting the application. With regard to substantial loss, if the moneys are distributed to the seven original applicants there is no guarantee that they will be in a position to refund the same.

The Application having been brought without unreasonable delay is granted. Under O 41 r 6 states no order for security can be made against the 2nd interested party. I do not intend to ask for security from the 1st interested party as the appeal procedure is likely to be quick and I do not see that the original Applicants will be prejudiced by a short delay whilst the matter of the appeal is being determined.

DATED and DELIVERED at NAIROBI on 26th January 2005.

P.J RANSLEY

JUDGE