



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Suit 26 of 1998

SAMUEL M. W'NJUGUNA.....PLAINTIFF

VERSUS

COFFEE BOARD OF KENYA.....DEFENDANT

RULING

The Applicant by its application of the 23/11/2004 seeks orders to stay the realization of guarantees given by it in respect of an application dated the 14/7/2004 which were conditioned to be realized if the Application was dismissed and if allowed then the decree herein was to terminate unless extended.

The Application was in fact dismissed but the guarantees it appears have not yet been implemented although that is what the terms of the guarantees states. The Applicant also seeks to stay the execution of the decree herein pending the hearing of an appeal in the Court of Appeal. So far as the guarantees are concerned their terms cannot be varied without the consent of the guarantors and the judgment creditor and must be implemented in the terms in which they are drawn.

A stay can only be granted however if the Applicant has shown that it is just to make the order, that it will suffer substantial loss and that the Application has been made without unreasonable delay.

In this case the Applicant by its Managing Director, Mr. Solomon Waweru states in the Supporting Affidavit sworn on the 23/11/2004 in paragraph 5:

THAT this is a lot of money today. The Plaintiff is an individual and it is most likely basing this on a balance of probability that he may not be able to raise the amount in the event of a successful appeal.

In response, the Respondent has sworn a Replying Affidavit setting out details of his property showing he is a man of substance worth over Kshs 100 Million. Mrs. Karanja for the Applicant rightly points out that there is no evidence to support the values stated in the properties and further that no certificates of search have been produced to show that the properties belong to the Respondent and are not encumbered. The appeal intended is against the Ruling of Mr. Justice Ojwang who declined the application of the 14/7/2004 seeking to either set aside the prayers herein or have the case reopened. The Applicant has not however appealed against the judgment itself. The judgment was the decision which rendered the Applicant liable to pay money to the Applicant and no stay has been sought until now of that payment which was given on the 31/7/2001. In my view, there has been undue delay in bringing that application for stay. In the result I do not find that sufficient cause has been made out to stay the execution of the judgment, which in any event as I have stated is brought with undue delay, and therefore dismiss it with costs to the Applicant,

DATED and DELIVERED at NAIROBI on 26th day of January 2005

P.J RANSLEY

JUDGE

Coram: P. J Ransley

Court Clerk: Maina

For the Applicant: Mr Mwaura

For the Respondents: Mr. Kagiri

Ruling delivered.

The Respondent seeks an informal stay of execution of 30 days to satisfy the decree.

Mr. Kagiri: Not Necessary.

Court: I grant a stay for 30 days.

P.J RANSLEY

JUDGE