



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**  
**Civil Appeal 94 of 2004**

**OTHAYA FARMERS CO-OP SOCIETY LTD..... APPELLANT**  
**VERSUS**  
**MWANGI WA KIHUNI ..... DEFENDANT**

**R U L I N G**

Othaya Farmers Co-op. Society the Appellant/Applicant seeks an order for stay of execution pending appeal. It contends that it has an arguable appeal as per the memorandum of appeal which it has filed. It further contends that the Respondent has initiated the execution process by proclaiming on its tools of trade and therefore it stands to suffer irreparable loss.

The Respondent objects to the application. Grounds of opposition have been filed contending inter alia that an appeal under Order XLI rule 4 is not sufficient reason for a stay and that the applicant has not shown that he will suffer any irreparable loss.

Having considered this application and the affidavits in support and in reply, I find that the applicant has not satisfied this court that substantial loss may result to it unless the order is made, the only reason being given is that the Respondent has proclaimed the applicants tools of trade and if sold, they will occasion the applicant substantial loss.

I have however examined the proclamation and I am of the considered view that the attached goods apart from a motor-vehicle said to be grounded are ordinary office equipments which can easily be replaced.

Although the applicant contends that it has an arguable appeal this has not been demonstrated to this court. I therefore find no justification to interfere with the execution process.

Accordingly I reject the application for stay of execution and dismiss it with costs.

Orders accordingly.

***Dated signed and delivered this 10th day of June 2005.***

**H. M. OKWENGU**

**JUDGE**

In the presence of d Mugambi for Appellant

Gori for Respondent