

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL DIVISION, MILIMANI
Civil Suit 213 of 2002

TWIGA PAINTS LIMITED.....PLAINTIFF
VERSUS
MURPHY MARKETING SERVICES LTD.....DEFENDANT

RULING

When this matter appeared before court on 1st July 2005 the court ordered that two applications, one filed by the plaintiff and dated 24th June 2005, the other filed by the defendant dated 16th June 2005 be heard together on 28th July 2005.

On 28th July only the defendant attended court, the plaintiff was absent despite that date having been given in the presence of plaintiff's counsel. On 28th July 2005 the defendant argued its application dated 16th June 2005 and sought only prayers No. 4 and 5.

The defence counsel relied on the supporting affidavit of JERSHON ANGADO DULO, which set out the circumstances under which exparte judgment was entered against the defendant and also the circumstances under which the execution was levied against it. The defendant seeks stay of execution of decree pending appeal and an order for enlargement of time of filing an appeal.

The court has considered counsel's submissions and the affidavit in support of the application. Since there was no opposition to the said application I find that the defendant's application is merited.

I accordingly grant the defendant the following orders: -

(1) That this court does grant the defendant stay of execution of the decree vide the warrant of arrest issued on 25th May 2005 in this matter pending the intended appeal.

(2) That the court hereby does enlarge the time within which to file the intended appeal against the decision of the deputy registrar of 21st October 2003, such appeal shall be lodged within seven days from this date hereof.

(3) The plaintiff's application dated 24th June 2005 is dismissed with costs for non-attendance.

(4) The defendant is awarded costs of the application dated 16th June 2005.

Dated and delivered this 29th July 2005.

MARY KASANGO
JUDGE