



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Case 1068 of 2001

**HOUSING FINANCE COMPANY OF KENYA LTD.....
.....PLAINTIFF/APPLICANT**

VERSUS

**EMBAKASI YOUTH DEVELOPMENT PROJECT
.....DEFENDANT/RESPONDENT**

RULING

The Applicant applies for a stay pending appeal to the Court of Appeal from the order of Mr. Justice Ojwang in which he refused a reference from a decision of the Taxing Officer, who had rejected a submission by the Applicant herein, that as the Respondent in this Application had no legal persona, no costs could be awarded to it. His reason for rejecting the reference are contained in his Judgment of the 12.11.2004.

Mr. Ahmednasir for the Applicant submitted that the Applicant had a good cause against the said Judgment and that the matter was a proper one for argument in the Court of Appeal. In the result the amount of costs should be put into an interest bearing account in the names of the parties' advocates

Mr. Omuga opposed the application and submitted that a stay in respect of costs should not be granted.

He relied on *Morgan & Elford C.A. 1876 CD Vol. IV page 352* in which it was held:-

“A party to whom costs have been ordered to be paid will not be restrained from enforcing the order pending an appeal to the House of Lords, if his solicitors undertakes to refund if the order should be reversed”

Also Kabaa versus Wambui & Another Court of Appeal No.298 of 1996 where the Learned Court of Appeal states:

“Furthermore we do not think a stay can be granted in respect of costs”

In this case the advocate for the Respondent is prepared to give an undertaking to refund the costs if the Appeal succeeds and it is so ordered.

In my view this is the proper procedure in dealing with costs.

I therefore decline to grant this Application which is dismissed with costs but order that the costs are paid to the Respondents’ advocate on his undertaking to refund the same if the appeal succeed and it is so ordered.

Dated and delivered at Nairobi this 11th day of July,2005

P.J. RANSLEY

JUDGE