

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Case 957 of 1997

NATIONAL BANK OF KENYA LTD.PLAINTIFF

VERSUS

JOAB HENRY ONYANGO OMINODEFENDANT

RULING

The Applicant seeks to stay the proceedings in the suit on the ground that he wishes to appeal against decision of Mr. Justice Azangalala declining to strike out the suit against the Applicant.

Order 41 Rule 4(1) gives the court the jurisdiction to stay proceedings.

The provisions of Order 41 Rule 4(2) apply only in the case of application for stay of execution.

The criteria as I see it for ordering a stay is that the Applicant would suffer prejudice if such an order was not made.

It is Mr. W'Obiero contention that if the suit is allowed to proceed it would not only prejudice the Applicant's rights for appeal but certain remarks which he says Mr. Justice Azangalala made in his ruling of 19.7.2005 in which he dismissed the Applicant's application to dismiss the suit would be prejudicial to the hearing of this suit.

I have read Mr. Justice Azangalala's ruling. In it I find nothing, which is prejudicial to the Defendant's rights in a hearing of the suit on its merits. Nothing said by Mr. Justice Azangalala is any way binding on a court hearing this matter. If the Applicant has no liability then he has nothing to fear as this will emerge at the hearing.

I also cannot see that if the suit goes for hearing the Applicant's rights in the Appeal will be affected as in the event that judgement is given against the Applicant he will have a right to appeal against each finding.

This is an old case filed in 1997 it will do no justice to the Respondent if the hearing of this case is further delayed.

In my view this suit should be heard on a priority basis and I so order. I dismiss this application to stay the proceedings and order that the suit be set down for hearing at the earliest possible date. Costs in cause.

Dated and Delivered at Nairobi this 26th Day of October, 2005.

P. J. RANSLEY

JUDGE