



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

Civil Suit 166 of 2001

JOTHAM MUGALO PLAINTIFF

VERSUS

TELKOM (K) LTD DEFENDANT

RULING

On 26.10.2005, the parties herein on an application for stay pending appeal made a consent that:

- 1. The sum of KSh.800,000/= be paid to the respondent on partial discharge of the decree. The said sum of be paid within 30 days from that date 26.10.2005.**
- 2. The balance of the decree to await the outcome of the appeal.**

The applicant be now filed an application seeking that the period for compliance with the order dated 26.10.2005, be enlarged. Mr. Olago-Aluoch Advocates complains that his office sent an E-mail but it was directed to Madison Insurance in error, instead of Alico Insurance. And after realizing the mistake his office sent a reminder on 24th November, 2005. Mr. Olago-Aluoch Advocates states that he takes full responsibility for the error and should not be visited on the applicant.

Having evaluated the matter, it is my decision that the application has no merit. It may be true that the office of Mr. Olago-Aluoch Advocate may have sent a wrong E-mail to the wrong client but it was incumbent upon the Advocate for the applicant to take precautionary steps to remedy the error immediately it was discovered. The parties agreed on a consent and it was upto the applicant to fulfil its part of the bargain within the stipulated time. According to the E-mail dated 24th November 2005, Mr. Olago-Aluoch Advocate was categorical that the stay ordered by the Court would lapse on 28.11.2005. The applicant were warned that if the cheque of KSh.800,000/= would not have been received on the due date, the respondent's Advocate would execute for the entire decree of KSh.1,600,000.

I have no communication to show that the application did not receive any documents from Mr. Olago-Aluoch Advocate before 24.11.2005. The judgment in this matter was entered on 30.6.2005 and from the records, the applicant had sufficient and adequate time to put its house in order. As at 24.11.2005, the applicant were well aware that its position were precarious and faulty. And it was incumbent upon to take the necessary steps to remedy the situation. On the whole the reasons advanced by the applicant is insufficient to warrant the exercise of my discretion.

In the premises the application is dismissed with costs.

Dated And Delivered At Kisumu This 20th December, 2005.

M. WARSAME

JUDGE

20.12.2005

Coram Warsame - Judge

Mr. Onyino holding brief Olago for the applicant.

Mr. Mwamu for the respondent.

Court Clerk Collins.

Court:

Ruling read in the open Court in the presence of both Advocates.

M. Warsame

JUDGE

Mr. Onyino:

We are praying that the applicant be given 14 days within which to comply with the order of payment.
We are praying for the copies of the ruling.

Mr. Mwamu:

You have just dismissed the application for stay and we oppose the application.

Court:

Stay for 7 days is granted, let proceedings and a copy of the ruling be supplied.

M. Warsame

JUDGE