



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL APPEAL NO. 200 OF 2003

AFRICAN LINER AGENCIES LTD.....APPELLANT

=V E R S U S=

AFROFREIGHT FORWARDERS LTD.....RESPONDENT

(Being an Appeal from the Judgment of Hon. R.M. Mr. Muneeni delivered on 12.11.2003 in RMCC 2425
of 202 -Mombasa
MOMBASA

AFROFREIGHT FORWARDERS LTD.....PLAINTIFF

=V E R S U S=

AFRICAN LINER AGENCIES LTD.....DEFENDANT

RULING

The Applicant is the Decree Debtor in lower court RMCC. No.2525/2002 seeking stay of execution of decree pending appeal against the judgment. Memorandum of Appeal was filed on 27/11/2003. The Respondent's claim is contained in a Complaint dated 23rd July, 2002 claiming Kshs.359,686/- arising out of contract to provide transport services by the Defendant to the Plaintiff.

The lower court has rejected a similar application for stay. However, this court has jurisdiction to entertain this application by dint of Order 41 rule 4 Civil Procedure Rules. On filing the appeal the Defendant Decree Debtor has approached the court seeking order of stay. By now the Proclamation of attachment shows total sum to be recovered as Kshs.499,087/38.

In his submissions Mr. Abed for Applicant stated that the substantial damage that would be incurred is that the Decree Holder may not be able to repay the money if paid to them. His client has been dealing with Respondent and is afraid that the Respondent would be able to repay the money if it was paid to them. For the price of stay he offers to deposit the claimed amount into court. He submits that his appeal has good chance of success.

The application is opposed by Mrs. V. Maina who appeared and submitted that the application has no merit and is only a ploy to keep the Decree Holder out of the fruits of his judgment. She said her client is a trading corporation and there is no reason why they should be unable to repay in very remote chance of the appeal succeeding. I have perused the application and affidavits filed on both sides. I have also perused the record. It is clear that the claim arose in 1997 and the Decree Holder has been without the

money since that time. It is also to be noted that the Debtor is only showing fear of risking payment of money before the appeal is heard and determined. In both cases it appears the fear is that the money will not be refunded in case of success of appeal. On the other hand the Decree Creditor would find it difficulty having to engage auctioneers again to recover from the Debtor in case of failure to succeed in appeal. This fear can be taken care of by guaranteeing that each party shall have easy access to the money whichever way judgment in appeal goes. To take care of both parties I hereby order the Applicant do deposit a sum of Kshs.500,000/- into an interest earning account in a reputable bank in the joint names of both counsel. The deposit shall be made within the next 21 days from to-day in default the stay hereby granted shall lapse and be of no effect. Upon payment of deposit as ordered the present attachment shall be vacated. Until then, status quo to continue.

The costs shall be in the cause.

The application is therefore allowed in the said terms.

Dated at Mombasa this 27th day of January, 2004.

JOYCE KHAMINWA

J U D G E

27/1/2004

Ruling read in presence of:

Mr. Abeid – for Applicant

Mr. Nyabena – for Respondent

JOYCE KHAMINWA

J U D G E

Mr. Abeid - I apply for a certified copy of the Ruling.