



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CIVIL APPEAL NO. 13 OF 2004

ANWARALI & BROTHERS LTD. APPELLANTS

VERSUS

JACINTA WAMBOI KANAGI RESPONDENT

RULING

The application before me was filed on 8/3/2004 by Anwarali & Brothers Ltd. and Muthoka Mukiti. They seek an order to have the same certified urgent, that service be dispensed with, and that there be an interim stay of execution pending the inter – parties hearing and determination of their earlier application which was dated and filed on 12/2/2004.

The application is opposed by counsel for Jacinta Wamboi Kanagi, whose grounds it is, that the same is incompetent, the appeal is incompetent and that this court lacks the jurisdiction to entertain both the appeal and the application.

The brief facts leading to this application are that on 12/2/2004, these same applicants moved the court under certificate of urgency, and also sought the following orders inter alia;

“1..... That service of this application be dispensed with at the first instance.

2. That there be stay of execution of the decree herein pending the hearing and determination of the appeal.”

Though the application was certified urgent, this court declined to give any interim orders of stay of execution as none had been applied for, and at inter parties hearing was set down for 2/3/2004, with an order that notices do issue.

It is on record that though the notices were issued, the same did not indicate when the matter would be heard and no party appeared on that day.

The applicants then filed this current application in which they seek the aforementioned orders, and in their own wisdom, they filed yet another application in the lower court seeking to have the earlier orders of stay extended. That application was filed during the pendency of the applications in this court.

It cannot be gainsaid that it is an abuse of the process of the court for a party to file a multiplicity of suit or applications, and that the court has the inherent power to prevent such an abuse. In any event, and I am inclined to agree with the respondents counsel, the application before me now is not catered for within our Civil Procedure as a party cannot seek interim orders pending the hearing and determination of an earlier application.

It was open to the applicants to withdraw that earlier application and thereafter move the court with a proper application, but not to have both applications on record, or even move 2 courts simultaneously.

This application is thus dismissed with costs, for being an abuse of the process.

Dated and delivered this 9th day of March 2004.

JEANNE GACHECHE

JUDGE

Delivered in the presence of:

Mr. Murei for the respondent

N/A for the applicant