

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO.676 OF 2003

DWA ESTATE LIMITED :::APPELLANT

VERSUS

CHARLES OYUER ::: RESPONDENT

RULING

In this application, the applicant seeks stay of execution of the Judgment of Senior Resident Magistrate delivered on September 17, 2003 pending the determination of this Appeal. The application is supported by the affidavit of Susan Wakiaga sworn on February 6, 2004. The Applicant says that it has an arguable appeal citing the fact that the Respondent was not on duty when the alleged injury giving rise to this Judgment was suffered. The applicant fears that if the decretal sum is paid, it will not be able to recover the same if successful because the Respondent is a person of straw.

The Respondent, a farmer, says his income is shs 600/= per month. His Counsel argued that the application was defective because it was sworn by an officer of an Insurance Company, and not the Litigant; and because the lower Court had declined an application for stay. Both arguments are misplaced. The supporting affidavit is sworn by the instructing clients, who certainly has the competency to so swear; and the lower Court's refusal to grant stay is no bar to this application.

The applicant has met the conditions required for stay under O.41 R.4, and I hereby grant stay of execution as prayed provided the entire decretal sum is deposited in Court within the next 14 days. Costs shall be in the cause.

Dated and Delivered at Nairobi this 9th day of March 2004.

ALNASHIR VISRAM

JUDGE