

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CIVIL APPEAL NO.263 OF 2003

UNITED INSURANCE CO. LIMITED..... APPELLANT/APPLICANT

VERSUS

FRIDAH KERUBO ONYANCHA RESPONDENT/RESPONDENT

RULING:

Applicant prays for stay of execution of the decree in Kisii CMCC 132 of 2000 pending the hearing of this appeal. It was submitted that having been dissatisfied with the judgment of the lower court he has filed an appeal which have high chances of success.

The application was opposed. First Mr. Lebu said the firm of Ocharo Otiso & Co. Advocates are not properly on record. Initially the firm of M/s Soire & Co. were appearing for the appellant. M/s Otiso & Co. did not comply with order 3 rule 9(1) CPR before coming on record.

Secondly Mr. Lebu submitted that the applicant/appellant had filed another similar application in the lower court which he abandoned after getting interim orders. His hands are there not clear.

I have considered the application. First this appeal has not been heard and judgment entered. There was therefore no need for the firm of Otiso & Co. Advocate to make an application under O.3 rule (1) CPR before coming on record in place of M/s Soire and Co. Advocate.

As for the appellant having filed another application in the lower court that does not estopped him from filing a similar one in this court. He can chose to file either in the lower court or in the high court. He can abandon the one in the lower court and file another one. It is not an abuse of court's process.

The appeal has already been filed. I feel it would be in interest of justice to stay the execution until the appeal is determined otherwise it may be rendered nugatory.

In the circumstances I allow the application and order that there be a stay of execution of decree in Kisii CMCC 132 of 2000 until the appeal is disposed off on condition that the applicant/appellant deposit the whole decretal amount together with taxed costs in a joint interest earning account in names of both counsels for the parties within the next 14 days. Failure to do so this application stands dismissed.

Dated 29th July 2004 at Kisii.

KABURU BAUNI

JUDGE

29/7/04

Mr. Otiso for applicant.

Mr. Ogari for Mr. Lebu for respondent.

KABURU BAUNI

JUDGE