

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII
MISC. CIVIL APPL. NO.91 OF 2004

BROOKE BOND (K) LTD PLAINTIFF
VERSUS
JAMES NYABISI DEFENDANT.

RULING

The applicant's application is for a stay of execution of judgment and decree in Kisii CM CC.NO. NO.251/98 and vacation of order to re-attach his motor vehicle KAK 812S pending the hearing and determination of the intended appeal. It was submitted that judgment was delivered in absence of counsel for the applicant and without Notice.

The application was opposed by Mrs. Obaga for the Respondent.

I have carefully considered the applicant's submissions and affidavits. The applicant has already started process of appeal by applying for enlargement of time to file appeal.

The respondent was a casual worker. I am satisfied that in order not to render the intended appeal nugatory it is fair and just to order stay of execution of the judgment. I will therefore allow the appeal and hereby issue an order of stay of execution until the intended appeal is heard and determined. The applicant to deposit the whole of decretal sum in an interest accruing account in joint names of both parties within 15 days.

As the issue of attachment though counsel for application submitted that it was irregularly done there was no prayer like that in the application. The only prayer is to vacate order for re-attachment of applicant's M/V KAK 812S. Having ordered stay of execution it follows that no re-attachment should proceed.

However if there are any auctioneer's costs increased they should be borne by the applicant. Costs of the application in the intended appeal.

It is so ordered.

Dated 9th November 2004

KABURU BAUNI

JUDGE

9/11/04

Ms. Obaga for Respondent.