

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CIVIL APPEAL NO. 528 OF 2002

(From the Original Civil Suit No. RMCC 1477 of 2002 of CM's Court at Milimani)

LUKA KIMARU t/a KIMARU

KIPLAGAT & CO. ADOVCATES APPELLANT

VERSUS

IBRAHIM K. RUGONGO RESPONDENT

RULING

I do not understand how the appellant became a party to the suit subject to this appeal. If I go by what part he played in this matter as per the record.

This observation gives me the view that the appeal filed herein is not insubstantial. And if the plea in the lower court was for a log book which as the record shows was not obtained by the appellant as were the instructions of the other defendant and that this is the reason why the appellant withdrew from this matter, as acceded to by both counsel herein, then what is it that was being sought from the said appellant in the suit subject to this appeal?

Surely these two observations must lead to the fact that there is a prima facie appeal with the probability of success which would warrant that this application for stay of execution succeeds. Moreover, that contempt proceedings are in the offing against the appellant for failing to obey the lower court order which is seriously contested in this appeal – which contempt order would interfere his liberty, is a further reason to lead this court to grant this application for stay of execution.

Consequently I grant the order sought but direct the applicant to pay costs thereof to the respondent.
Delivered this 6th day of February 2003.

D.K.S AGANYANYA

JUDGE