



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Misc Appli 666 of 2001**

**ONESMUS GITHINJI & COMPANY ADVOCATE.....APPLICANT**

**VERSUS**

**SHREYESH DAVE.....RESPONDENT**

**Coram: J. W. Mwera J.**

**Sarvia for Applicant**

**Gachuhi for Respondent**

**RULING**

The respondent/applicant filed this application on 26.3.03 under Order 41 rule 4 Civil Procedure Rules and Section 3A Civil Procedure Act. He seeks orders that the proceedings in this matter be stayed pending the final determination of an appeal he intendeds to file against this court's ruling of 13.2.03. That he had not only filed a notice of appeal but he had also applied for the proceedings etc required in filing the appeal. The ruling of 13.2.03 dismissed the applicant's application of 15.2.03 which sought to strike out a bill of costs dated 19.11.2001.

Mr. Sarvia told the court that it would be futile and a waste of time if this court did not grant a stay order whereby the bill of costs was taxed only to be thrown overboard in case the intended appeal succeeds. That that appeal was arguable and even with probabilities of success. That a stay order would not prejudice the respondent in this application at all. That sufficient cause was thus shown to stay the proceedings and that for that the aspects of substantial loss and furnishing of security did not arise at all.

Mr. Gachuhi on his part did not agree with the applicant at all and the submissions from both sides are incorporated in the following determination:

The applicant emphasized that he was seeking a stay of proceedings so that the disputed bill of costs is not taxed because the order allowing it to be taxed was the subject of appeal. That in that regard it was not necessary to demonstrate substantial loss or furnishing of security for due performance. It then appears that stress is laid on the basis that judicial time will have been wasted in case the taxation goes on yet if the appeal succeeds all that will go. This is a laudable concern on behalf of the Judiciary by a litigant but this court is not satisfied that it constitutes sufficient cause to stay the proceedings here. Many a time lower courts engage in lengthy, complex and even protracted hearings only to arrive at a decision that is overturned on appeal. Such exercises in most cases are even more taxing than taxing bills of costs. But when thrown overboard it is not said that all was futile. Indeed in some cases, going over the same exercise again may be ordered. But it is the nature of judicial work. What a court ought to do it will do. If a higher court's decision overturns it so let it be.

In sum this application is dismissed with costs.

Orders accordingly.

Delivered on 10<sup>th</sup> July 2003.

**J. W. MWERA**

**JUDGE**