

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL APPEAL NO. 535 OF 2000

MOSES MUNGA MBIYU.....APPLICANT

V E R S U S

C.F.C. BANK LTD.....RESPONDENT

R U L I N G

On 12th October, 2001, I delivered a Ruling in this matter in which I granted an order for stay of execution on terms:

“that the Applicant shall provide security for the decretal sum and costs upto the sum of shs. 500,000 by a Bankers guarantee or Insurance Bond from institution acceptable to the Respondent or approved by Court. The security shall be provided within 21 days of this Ruling failing which this application will stand dismissed. If the order is complied with there will be a stay of execution granted for a period of 6 months.”

Nothing happened within the 21 days limit granted and therefore the default provision took effect. The deadline was 3rd November, 2001.

More than three months later, however, on 19th February, 2002 the Appellant/Applicant returned to Court seeking review of my said Order under Order 44 Rules 1, 2, 3, 4 of the Civil Procedure Rules. None of the grounds mentioned under Order 44 Rule 1(1) were listed in the application but Learned Counsel for the Applicant Mr. Ombati submitted that reliance was made on the widely applicable clause “or for any other sufficient reason.” And the reason given is this-:

That three months or so before my Ruling was delivered, the Applicant’s wife was admitted in hospital and incurred a large bill of Shs. 174,999/=. He was for that reason unable to secure the Bankers guarantee or Insurance Bond in compliance with the Court order. He only managed to talk to an Insurance Company on an undisclosed date, said to be “only recently”, and obtained a Surety Bond in which the Insurance Company undertakes to pay the Government of Kenya Shs. 500,000/=. The Bond was signed on 15th February, 2002.

From the annexures, it is indeed so that the Applicant’s wife was hospitalized on 14th July, 2001 and was discharged on 1st August, 2001. The bill for medical expenses was submitted on 1st August, 2001. Clearly therefore these were facts which have always been within the knowledge of the Applicant long before the expiry of the Court orders sought to be reviewed. Objection was raised by Learned Counsel for the Respondent Ms. Muriu that there was inordinate delay in seeking review for extension of time to comply with the order. I think there is substance in that objection. For the Rule invoked admits only applications that are taken out “**without unreasonable delay**”. Delay as always defeats equities and there was no reasonable explanation in this matter for failure to apply for extension of time within the 21 days period granted by the Court.

As it is the application comes long after the order took effect and there is no live application which can be reactivated by extension of time to comply with orders. At all events the Surety Bond exhibited does not comply with the Court order.

The application is dismissed with costs.

DATED at **NAIROBI** this 15th day of March, 2002.

P.N. WAKI

JUDGE