

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

APPELLATE SIDE

HIGH COURT CIVIL APPEAL NO. 517 OF 2001

(From the original civil suit No. EJ 610/94 of 20..... of CMCC at

Nairobi)

GEOFFREY MARUBU MWANGIAPPELLANT

VERSUS

MOTOR MART GROUP LIMITED

T/A BRUCE TRUCKS & EQUIPMENTRESPONDENT

RULING

I am not convinced this is a proper case for granting an order of a temporary injunction pending appeal.

There must be certain category of cases where such an application should be made and/or probably obtained; say where a litigant has lost a dispute over a piece of land and the winner starts a process to construct a structure thereon or that he/she wishes to proceed to dispose of or transfer the land to some third party.

But in case of money decree as in the present case I do not see how the applicant can succeed in obtaining an order of injunction without demonstrating that he will suffer substantial or irreparable injury or the chances of success of the appeal – what the appellant herein has not done at all.

To simply say the applicant has a counter claim against the respondent or that if an injunction is not made he will suffer substantial loss without demonstrating what these losses will be or how they will occur, or that he has high chances of success or appeal without showing what the chances are is not enough to convince the court of the need for the issue of a temporary injunction.

On the other hand I do not see the purpose of this amendment to Order XLI rule (4) of the Civil Procedure Rules which brought in injunction process when, to my mind, an order of stay pending appeal was sufficient! I am not saying this application is improperly before me but that the Rules Committee need to re examine this aspect of the matter to be if the inclusion of this amendment is not likely to be used by litigants to cause confusion!

This notwithstanding, I am not convinced this is a proper case when an order of temporary injunction should be issued.

I dismiss this application with costs.

Delivered this 24th day of April, 2002.

D.K.S. AGANYANYA

JUDGE