



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**CIVIL APPEAL NO.94 OF 2001**

**A.Y. JIWAJI & JIWAJI ..... APPELLANT**

**VERSUS**

**MANSWAB ADNAN MOHAMED ..... RESPONDENT**

**R U L I N G**

The appellant filed a Notice of Motion for stay of execution under Order 41 rule 4 dated 2\30/8/2001.

The grounds disclosed is that the applicant has filed an appeal – Memorandum of Appeal is annexed. The goods distrained are in the auctioneer’s hands and may be sold at any time. The supporting affidavit shows that the goods distrained are of the office of an advocate and there is some confidential client’s information stored in the computer. The original dispute between the parties relates to tenancy terms. The replying affidavit accuses the applicant of unreasonable delay.

The application has also been overtaken by events since the distrained goods have already been taken into the possession of the Respondent and further more no stay of execution can be granted in case of dismissal order of the application appealed from. Also that no stay has been applied for firstly in the lower court as demanded by the Civil Procedure Rules Order 41 rule 4. Further more there are in the lower court objection proceedings under Order 21 rule 57 Civil Procedure Rules. Upon perusing the affidavits filed by both parties and after hearing counsel for the applicant I find that the applicant has not shown “sufficient cause” that order for stay should be granted in his favour. Very scanty information is supplied by the applicant to this court. Filing an appeal itself does not act as a stay of proceedings.

It is not shown that the applicant shall suffer substantial loss if the application is denied. No hint is given of the nature of the dispute in the lower court other that there was an injunction hat was rejected and the applicant has appealed against the same. The rules of procedure requires a security to be given by the applicant not undertaking that he will surrender the goods if he loses the appeal. I find that the applicant is taking the court for granted. He has not complied with the requirements demanded under Order 41 rule 4. In the circumstances I find there is no sufficient cause shown to warrant a stay.

The application is therefore dismissed with costs.

**Dated at Mombasa this 18th Day of June, 2002.**

**J. KHAMINWA**

**COMMISSIONER OF ASSIZE**