

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL APPEAL NO. 73 OF 2002

DANIEL OTIENO AMADI APPELLANT

V E R S U S

MARTIN JETAH MWATETERESPONDENT

RULING

This application dated 11th July 2002 is seeking only one main order and that is an order that there be a stay of execution of the judgement delivered in Mombasa CMCC No. 4059 of 2000 on April 15th 2002 pending the hearing and determination of this application and thereafter pending the hearing and determination of this appeal. The only reason for the application is that the appeal filed against the same judgment has overwhelming chances of success and so unless a stay is granted the appeal shall be rendered nugatory. There is an Affidavit sworn by the learned counsel for the Applicant in support of the Application. There are also annexures to the same affidavit and there is Memorandum of Appeal.

The Respondent opposed the application stating in his grounds of opposition that the application was not brought in good time as the subordinate court dismissed similar application on 13th June 2002; that the application does not comply with the Civil Procedure Rules and that the appeal lacks merit.

I have considered the application. During the hearing, it transpired that the Applicant did not dispute certain awards which were made such as the award for life expectation, special damages in respect of payment for limited grant and Police Abstract. In fact some of these were entered by consent of the parties.

I do think that in the interest of justice and as the appeal as to the rest of the judgment is to my mind arguable, and if the entire money is paid, the Respondent who has not been shown to be capable of refunding it may not be able to refund it in case the Applicant succeeds in appeal and thus the results of appeal may to the extent of the same balance be rendered nugatory, I will order the Applicant to pay the award in respect of life expectation, and special damages awarded as third award to the judgment below and 1st award respectively within 30 (thirty) days of the date hereof and provided this is complied with, execution for the rest of the payments will be stayed till the appeal is heard and determined. There will be stay of execution for the next thirty days from date hereof to enable this order to be carried out. I want to make it clear that the stay granted herein is only subject to the two awards namely specials, ordered in No. 1 and life expectations ordered in No. 3 of the judgment of the subordinate court being complied with within 30 days of the date hereof. It goes without saying that if that order is not complied with then there will be no stay of execution. Respondent will have half costs of this application in any event.

Dated at Mombasa this 19th day of July, 2002.

J. W. ONYANGO OTIENO

JUDGE