

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIV APP 430 OF 02

SIAYA SUPERMARKET LIMITEDAPPELLANT

VERSUS

BADBONE CLARK KENYA LTD.RESPONDENT

R U L I N G

In an application of this nature where the applicant is seeking the court's indulgence to be heard in the lower court, it is upon the said applicant to annex a draft defence to the application to confirm to the court that indeed he/she had good ground to be heard in that court. At the same time it is important in an application of this nature for the applicant, not only to show but to demonstrate, that if no order of stay is made, the applicant will suffer substantial loss or that the appeal, if successful will be rendered nugatory if the order of stay is not granted.

The applicant should also show that if the order of stay is not made and the appeal succeeds after execution, the respondent is not the kind of person to refund the decretal sum. In this application the applicant has not annexed thereon copy of pleadings in the lower court to show what actually transpired to lead to the order subject to the appeal which gave rise to this application or that he/it had a good case had it been given a chance to be heard in the lower court..

The applicant neither demonstrated how or if any, what substantial loss will be suffered if this application for stay is not granted or that if the stay is not grant and the appeal succeeds, the respondent is the kind of litigant who will not refund the decretal sum. This court is aware this is a discretionary order which the court should or should not grant in exercise of that wide discretion. Having heard submissions of counsel for both parties and perused through the application, the supporting and replying affidavits and the amount involved, I do not find this a suitable case where stay of execution should be granted.

I dismiss this application with costs.

Delivered this 28th day of November, 2002.

D.K.S. AGANYANYA

JUDGE