



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. 116 OF 1993

GURDARSHAN SINGHAPPELLANT

VERSUS

C.K. VIRDEE J.S. VIRDEERESPONDENTS

RULING

The application dated 25th September, 2002 and filed in court on 26th September, 2002 relates to appeal numbers 116 of 1993 and 117 of 1993 in which Honourable Justice Shields, as he then was, ordered stay of execution conditioned on the appellant depositing a sum of Kshs.10,000/= in each appeal.

The application was intended for the release of this security on the ground that the appeals the subject to the deposits having been concluded these deposits should be released to the applicant.

It was supported by the grounds stated on the body of the application and also the affidavit deposed to by the applicant's counsel.

The ground on the body of the application and the supporting affidavit were simply that pursuant to the court order dated 17th May 1993 counsel for the appellant deposited into court Kshs.10,000/= each in respect to HCCA Nos 116 of 1993 and 117 of 1993 and that since the appeals had been concluded the deposits should be released to the appellant's counsel for his clients.

The application was heard in court on 11th November, 2002 wherein counsel for the applicants repeated what was stated on the body of the application and the supporting affidavit while counsel the respondent opposed the release of the deposit money to the applicants arguing that this security money should cover costs which follow the event.

The matter related to a rent restriction dispute wherein the tribunal assessed rent at Kshs.5,800/= per flat occupied by the appellants with effect from 1.4.93.

The appellants were not happy with this assessment and he lodged the appeal against the same.

Pending the hearing of the appeals, the appellant made an application for stay of execution and these are the applications which Justice Shields granted on 17th May 1993 condition of a deposit of Kshs.10,000/= per each appeal.

The appeals were argued by written submissions of counsel for the parties which were filed in court – (see the order of court – Justices Amin (as he was then and Kuloba dated 27th July 2000).

After the submissions were filed, the judges wrote and delivered the following judgment on 7th August, 2001:-

“We have duly perused the memorandum of appeal, the record of appeal and these we have fully considered in the light of submissions made by learned counsel for the appellants and the respondents so as to arrive at our own conclusion afresh as an appellate court of the first instance. Having done so, we arrive at the same conclusions as the one arrived at by the tribunal.

We do not find any merit in any of the grounds of the appeal. This appeal is consequently dismissed. Full reasons to be given on notice.

In view of the length of the tenancy we allow the appellants tenants stay till 31 st August 2001 to vacate the premises.

Order accordingly.

Read and delivered at Nairobi this 7 th day of August 2001.”

Signed: R. KULOBA J

SHAIKH AMIN J

That is the position in this matter. I was not told that full reasons as promised in the judgment have been given and/or when. If this be so, then the appeals have not been concluded as claimed by counsel for the applicants.

I would have expected counsel for the parties herein to apply that the full reasons be given as per the Judgment before taking any further action in the matter rather than the appellants coming up with this otherwise premature application for the release of deposit money.

I dismiss this application with costs.

Delivered this 18th November, 2002.

D.K.S. AGANYANYA

JUDGE