

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. CIVIL APPLICATION NO.1358 OF 2000

FOREST PRODUCTS (K) LIMITED.....APPLICANT

VERSUS

KENYA CLAY PRODUCTS LIMITED.....RESPONDENT

RULING

By a Notice of Motion dated 19th December, 2000, the Applicant is seeking Stay of Execution of the Judgment of the lower court dated 19th October, 2000.

This application is based on the grounds that the Learned Magistrate did not consider the counter claim filed by the Defendant when she entered judgment for the plaintiff. The applicant intends to appeal against the judgment and says that it has an arguable appeal and if the application for Stay of the Execution is not granted the applicant shall suffer substantial loss and consequently the result of the appeal shall be rendered nugatory. The application is opposed on the grounds that the counter claim was not dismissed and therefore the applicant is at liberty to press its claim by having the counter claim heard.

The applicant accepts that its claim in the lower court in the counter claim was not struck out and therefore can still be prosecuted. A counter claim is after all a claim on its own. The fact of the counter claim appears to form the main ground of the intended appeal. I would not consider this as an arguable appeal since the applicant has not yet prosecuted his counter claim. For a Stay of Execution to be granted the applicant must show sufficient cause and that it would suffer substantial loss if the application is not granted.

Having considered the reasons advanced in support of this application I find that the applicant has not shown it will suffer any loss. Besides, the applicant has not shown that the Respondent would not be in a position to repay this money if the appeal succeeds. I do not consider the application as meriting granting any further consideration and I dismiss it with costs to the Respondent.

Dated and delivered this 30th day of January, 2001.

KASANGA MULWA

JUDGE