

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 1787 OF 2000

WASHINGTON O. OKEYO PLAINTIFF
VERSUS
KENYA BREWERIES LIMITED 1ST DEFENDANT
TEMBO CO-OPERATIVE SAVINGS & CREDIT SOCIETY 2ND
DEFENDANT

RULING

This is an application for stay of execution of an order made by this court on 21.11.2000 pending appeal. The application has been made under O. XLI Rule 4 of the Civil Procedure Rules and is supported by an affidavit sworn by Joseph Ogada, the Chairman of the 2nd defendant. When the ruling dated 21.11.2000 was made, the applicants applied for and were granted a 30 days stay of executions of the order pending the filing of an appeal to the Court of Appeal. It is necessary to observe that the stay was granted despite my absolute conviction that the applicants, especially the 2nd one, had acted quite illegally and in granting the stay, I was in effect perpetuating an illegal act.

It has now been stated on behalf of the defendants that an appeal (Civil Appeal No. 332 of 2000) has been duly filed in the Court of Appeal. However, instead of making an application in the Court of Appeal for stay of execution pending the hearing and determination of that appeal, the defendants have chosen to come back to this court for another order of stay of execution on grounds (see grounds (v) and (vi) stated in the Notice of Motion dated 20.12.2000 which clearly do not fall within O. XLI Rule 4 but are more germane applications under Rule 5(2) (b) of the Court of Appeal Rules.

It is my view that no attempt has been made by the applicants to satisfy the requirements of O. XLI Rule 4 (2) and clearly this application ought not to be granted. The application is for those reasons dismissed with costs.

Dated at Nairobi this 26th day of January, 2001.

T. MBALUTO
JUDGE