

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
CIVIL CASE NO. 322 OF 2000

JANE NYABOKE NJAGI
T/A NJAGI NYABOKE & Co.....1ST PLAINTIF
-VERSUS-
DR. WOKABI.....DEFENDANT

RULING

The application is by a Notice of Motion filed under Order 41

Rule 4 and 6 and Order 50 Rule 1 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act asking for the Orders that:

- (1) There be a Stay of Execution of the Judgement decree pending the appeal.
- (2) Interim Orders for Stay of Execution pending inter-parties hearing of this application be granted.

In the supporting affidavit the applicant deponed that the judgement in question was given on 30-5-2000 for sum of Shs.195,515 together with interest and costs. Notice of appeal and a memorandum of appeal were filed on 6th June, 2000 and 4th July, 2000 respectively.

The application is opposed on the ground that there was a similar application, which was heard and dismissed by Commissioner Gacheche on 18.1.2000.

I have looked at the Ruling by Commissioner Gacheche. The application was rejected because the intended appeal was filed late and without leave to file it out of time.

In the present application the applicant is asking for leave to file the appeal out of time. The applicant has in her affidavit in support explained the circumstances, which led to the delay. I do not think the ends of justice will be served by denying the applicant the right to exercise her right to appeal on such technical grounds as are advanced. I will therefore grant the leave to file the appeal out of time. To that extend the appeal shall be deemed to be duly filed and served.

Following this leave I shall grant the Stay of Execution. I am satisfied that the applicant is in a position to repay the decretal sum in the event the appeal does not succeed.

The application is therefore allowed in terms of prayers 1,2 and 3 of the Notice of Motion.

The applicant will however pay the costs of this application in any event.

Delivered and dated this 27th day of February, 2001.

KASANGA MULWA

JUDGE