

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL CASE NO.2 OF 2000

MRAO LIMITED.....PLAINTIFF

VERSUS

FIRST AMERICAN BANK.....1ST DEFENDANT

ABDUL ZAHIR SHEIKH.....2ND DEFENDANT

ANDRE DOUGLAS GREGORY.....3RD DEFENDANT

R U L I N G

Mr. Okongo has argued on behalf of Mr. Dhanji Advocate that extension of exparte stay Order should not have been given in this case because under Order 41 Rule 4 of Civil Procedure rules there is no Jurisdiction. Besides, he said this is a case that required security as the Defendants have counter-claimed in the amount of KSh.100, 000/= but Mr. Wasuna opposed the application saying the Order was temporary and made under inherent Jurisdiction of the Court in view of the urgency. As for security he said there would be no need as the defendant is in possession of the property in dispute in the main suit. There is no danger that the Defendant will lose it.

I think this is a storm in a tea-cup. There is no doubt that a court may use its inherent Jurisdiction to fill in gaps where procedural rules do not exist so as to safeguard its judicial authority. There are few exceptions where an order given by Court should be left to be eroded or nullified by an act or any party where the court ought to safeguard it. I am not convinced that because Order 41 rule 4 does not provide for stay. The Court cannot therefore in suitable case impose one. Secondly as concerns security I agree with Mr. Wasuna that the Defendant is sized of the security. There is no danger of loss in any event and I think requirement of security under Order 41 is actually clear.

I disallow the application with no costs to plaintiff. I would urge the parties to list the main application for substantive arguments immediately. The matter to proceed on 7th May 2001 as was set earlier.

DELIVERED THIS 9TH DAY OF MARCH 2001.

A.I. HAYANGA

J U D G E

Delivered to Mr. Wameyo

Delivered to Mr. Okongo in open Court.

A.I. HAYANGA

J U D G E

9/3/2001