

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO 4434 OF 1992

1 TOBIAS ONG'ANY AUMA

2 AARON MUISYO MWAILU

3 JOHN OTIENO OWILI

4 WALTER OJWANG' AWICH

5 FIDELIS NTHUNTHI

6 HENRY MUNENE KARUBIU

(Suing on their behalf and on behalf of the ex-employees of
Kenya Airways)

VERSUS

KENYA AIRWAYS CORPORATION

LIMITED.....DEFENDANT

R U L I N G

This is an application by way of Notice of Motion under Order 41 Rule 4 of the Civil Procedure Rules for orders that the judgment entered against the defendant herein on 23rd February, 2001 be stayed until the determination of the appeal therefrom. There is also a prayer for a stay of any further proceedings. The application is opposed.

Both learned counsel have ably presented their respective arguments and cited several authorities. I have read the said authorities. I also have in mind the guiding provisions and principles in respect of applications of this nature.

The application was filed on 9th march, 2001. It was therefore filed without unreasonable delay. The plaintiffs, it is true, have a valid judgment in their hands. This court however is not the final arbiter. I recognize the fact that I may have been wrong in the whole adjudication process. In such a case the aggrieved party should be given a chance to address the issues in the final court of justice.

An order for a stay of Execution does not deprive a decree hold of the fruits of the said decree. It merely delays such an execution in the event the appeal does not succeed, and, in a decree such as the one in issue, the delay can always be compensated by an award of interest.

The defendant has a right of appeal as a matter of right. That right should be exercised. I have considered the issue of security. An order of such nature should not be made where the liquidity of any party may be adversely affected. The commercial sector has in my view developed sufficient instruments which ensure that the interests of both parties are taken into consideration.

In view of the foregoing, the defendant's application succeeds in terms of the prayers set out in the notice of motion filed on 9th March 2001. The defendant shall, however post security by way of either a Bank Guarantee OR insurance Bond in the sum of Kshs. 500 million. The said security shall be executed within 15 days of today. Costs of this application shall be on appeal. Orders accordingly.

Dated and delivered at Nairobi this 4th day of June 2001

A. MBOGHOLI MSAGHA

JUDGE