



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI LAW COURTS)**  
**CIVIL CASE 3389 OF 94**

**SUN MODEL INDUSTIES LTD.....PLAINTIFF**

**VERSUS**

**INDUSTRIAL AND COMMERCIAL**

**DEVELOPMENT CORPORATION.....DEFENDANT**

**R U L I N G**

This is a application by way of Notice of Motion under order 41 Rule 4 Order 21 Rule 22 of the Civil Procedure Rules and section 3A of the Civil Procedure Act for a stay of execution of this courts judgment of 16th February, 2000 pending the hearing and determination of the defendant's appeal.

The application is supported by an affidavit sworn by the defendants corporation secretary and grounds that have been set out in the application.

In opposition thereto, the plaintiff filed grounds of objection and a replying affidavit sworn by the plaintiff's learned counsel. Both learned counsel have also made their respective submissions which I have on record. Some authorities have been cited which I have read and considered.

It is true that the defendant has filed a Notice of Appeal. The appeal is therefore deemed to have been filed. (See O.41 Rule 4(4)).

I bear in mind the provisions of O.41 Rule 4(2) in respect the conditions to be satisfied by an applicant in the position of the defendant herein. Both learned counsel have addressed these.

It has become fashionable for the financial status of parties to be raised now and then in applicants of this nature before the Court. This has ensured that the ends of justice have been met. On the other hand there are instances whereby deserving parties have been kept away from their fruits of judgment as their financial status has been found to be wanting. I believe therefore, that each case must be considered on its own peculiar circumstances.

With the foregoing in mind I now address the present application.

The suit proceeded to hearing on formal proof after the defendants statement of defence had been stuck out. The plaintiff's case was founded on several documents. These were produced in evidence. The witnesses were not questioned on those documents. Their admissibility was never an issue. Indeed, when the time for submissions came, the learned counsel for the plaintiff said he relied on the documents

produced while the learned counsel for the defendant replied by saying “The documents speak for themselves.” The court record has not been faulted at all.

The judgment in favour of the plaintiff was not *ex parte*. It is based on evidence adduced and the defendant corporation, which was represented all along was given an opportunity to test that evidence under cross-examination. It is a lawful judgment.

I cannot and dare not talk for the Court of Appeal; but with respect, no arguable appeal has been shown lies ahead of this judgment. The defendant may be a financial giant compared to the plaintiff’s meagre resources. That notwithstanding, justice must look at both sides. In this case a stay cannot be given without resultant injustice on the part of the plaintiff.

On my part I find that the application lacks merit. The same is therefore dismissed with costs to the plaintiff.

Orders accordingly.

Dated and delivered at Nairobi this 26th day of April, 2000

A. MBOGHOLI MSAGHA

JUDGE