



**REPUBLIC OF KENYA**

**Payless Car Hire & Tours Limited v Julius Njuguna Ngoroge & Another**

**High Court of Kenya at Nairobi                      August 29, 2000**

**Milimani Commercial Courts**

**T Mbaluto, Judge**

**Civil Case No. 468 Of 1998**

**August 29, 2000 T Mbaluto, Judge delivered the following judgment.**

This is an application to stay execution of a decree issued in this suit. The application which has been lodged under Order XLI rule 4 and Order L rule 2 of the Civil Procedure Rules is based on the following grounds:-

- (a) That the applicants have already filed a notice of appeal;
- (b) That they have an arguable appeal with a probability of success; and
- (c) The applicants have a good defence which is meritorious and which ought to be looked into before they are condemned.

There is also an affidavit in support of the application sworn by Julius Njuguna Njoroge, the 1st of the two applicants which purports to lay the factual basis of the application but fails to bring out some important facts of this case.

In this respect it is necessary I think, to observe at the outset that the intended appeal in respect of which a Notice of Appeal has purportedly been given seeks to overturn a consent order entered between the parties hereto. Pursuant to that order, the applicant agreed to settle the decretal sum but now appears to have resiled from the commitment. Further, Mr Adipo who appeared for the respondent in this application submitted that the Notice which the applicant's learned counsel is now talking about is in fact out of time and, given the facts of this matter, I think he is right. Consequently there would appear to be no appeal pending before any court. That is not however a matter upon which I can adjudicate, it being a matter for the Court of Appeal.

What I can however say of this application is that it is wholly devoid of substance and has clearly be brought purely to delay the respondent in the recovery of the decretal amount. I say so because under Order XLI rule 4, the very rule under which the application has been brought, it is provided:

“No order for stay of execution shall be made under subrule (1) unless the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay.”

No attempt whatsoever has been made to satisfy the requirements of the above sub-rule and for that reason alone, this application must fail. It is dismissed with costs.