

REPUBLIC OF KENYA

STALLION INSURANCE COMPANY LTD V CRESTED SEA AGENCIES LTD

High Court Of Kenya At Nairobi 2000.

Milimani Commercial Courts

T Mbaluto, Judge

October 23, 2000

T Mbaluto, Judge delivered the following ruling.

This is an application for stay of execution pending an appeal filed by the applicant against an order made by this court on May 30, 2000. The application is made under O. XLI rule 4 (1) and (2) of the Civil Procedure Rules. The grounds of the application as stated in the Notice of Motion dated September 13, 2000 are that the applicant has preferred an appeal against the order of May 30, 2000 and that the appeal has high chances of success. It is also claimed that the applicant will suffer irreparable damage if an order for stay is not granted.

The respondent opposes this application on the ground, amongst others that there has been an inordinate delay in bringing the application and that the intended appeal has no probability of success. Order XLI rule 4(2) of the Civil Procedure Rules under which this application has been brought provides that:- “No order for stay of execution shall be made under subrule (1) unless:- (a) 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.”

The order sought to be appealed against was made on May 30, 2000. This application was not filed until September 19, 2000. This means that a period of more than 31/2 months elapsed before the applicant decided to make this application. The evidence available suggest that the defendant was only woken up from its slumber by the commencement of execution process against it by the plaintiff.

The applicant claims that the delay in bringing the application was occasioned by negotiations between the parties which were entered into with a view to resolving the matter amicably. In support of that contention the applicant annexes 3 copies of letters exchanged between the parties. However in my view, the said letters do not show that any negotiations took place. That view was corroborated by Mr. Kembi for the respondent when he submitted that no negotiations as alleged or at all took place. I agree with him.

In my opinion, the delay involved is inordinate and remains unexplained. This means that the requirements of Order XLI rule 4 (2) have not been satisfied and consequently this application must fail. It is dismissed with costs.