

REPUBLIC OF KENYA

1 Commaert Hubert T/A World Clothes & Another v Elizabeth A Okech

High Court of Kenya at Nairobi December 6, 2000

Milimani Commercial Courts

T Mbaluto, Judge

Civil Case No 790 of 1999

December 6, 2000 T Mbaluto, Judge delivered the following ruling.

This is an application for stay of execution until further orders and the release of motor vehicle registration number KAK 696R pending the hearing of an application filed herein on October 9, 2000.

The decree the execution of which is sought to be stayed was made by this court on August 25, 2000. On the same day the applicant was granted 30 days stay of execution so that she could decide what steps to take given the circumstances of the matter. Since that date, the applicant appears to have done absolutely nothing except the filing of an application for stay of the court orders pending appeal which application to this day remains unprosecuted. More telling is the fact that no notice of appeal has been filed or served upon the respondent. That conduct suggests that the applicant is engaged in delaying tactics.

Under Order 41 rule 4(2) of the Civil Procedure Rules:- “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; and

(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

Though Mr Gaya who argued that application for the applicant submitted the applicant’s intended appeal, which he said had high chances of success would be rendered nugatory and that she would suffer irreparable loss if a stay was not ordered, I am not satisfied on account of what I have stated above, that the applicant has satisfied the requirements of the rule. For those reasons, the application in my view lacks substance and is dismissed with costs.