

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT HOMA BAY

CIVIL APPEAL NO.71 OF 2019

CECYPO (K) LIMITED.....APPELLANT

VERSUS

KENNEDY OTIENO AGONDA.....RESPONDENT

RULING

[1] Application dated 15th October 2019, considered in the light of the supporting grounds and those in opposition thereto.

The key elements with regard to **Order 42 Rule 6** are substantial loss and security.

[2] Whereas the applicants have shown that they are willing to provide security, they have not shown that they shall suffer substantial loss if stay is refused. The payment of the decretal sum is not by itself substantial loss. One has to establish more than just mere payment of decretal sum to prove substantial loss.

[3] Besides, the applicant opines that they shall suffer such loss simply because they are unaware of the respondent's financial status. The onus to establish that the respondent is a person of straw lays with the applicant and does not shift to the respondent. Other than mere opinion, the applicant has not established that the respondent is a person of straw. On the issue of whether the application is competent in view of a previous successful application by the applicant in the lower court, this court's view is that **Order 42** does not prevent the applicant making a subsequent application in the court in which the appeal shall be heard. However, it would be an abuse of the court process for several similar applications to be made in several courts.

[4] In sum, the present application is devoid of merit and is hereby dismissed with costs.

J.R. KARANJAH

JUDGE

11.11.2019

[Dated and delivered this 11th day of **November, 2019**

M/s Songwa holding brief for Morara & Co. for Appellant

Mr. Nyatundo for Respondent