

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL APPEAL NO. 24 OF 2012

PROTUS MUTIVA APPELLANT/APPLICANT

VERSUS

EBBY OMINA AMEYO RESPONDENT

RULING

This is an application dated 15th March 2013 brought under **Order 43 rule 6(1) and (6)** of the Civil Procedure Rules 2010. It is an application for stay of execution pending appeal.

The application was filed under certificate of urgency. When it came for hearing on 29th April 2013, both counsel for the applicant and the respondent relied on documents filed in the pleadings. They neither made oral submissions, nor filed written submissions.

The conditions for grant of orders of stay of execution pending appeal are enumerated in **Rule 6 (2) (a)** and **(b)** which states as follows –

“6(2) No order for stay of execution shall be made

under sub-rule (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.”**

In my view, this application was filed without unreasonable delay. The judgment was delivered on 26/2/2013 and the application was filed on 18/3/13. There was therefore no unreasonable delay in bringing this application.

Indeed, an appeal has been filed herein. I have seen both the memorandum of appeal and the judgment of the trial court. Both have been filed herein. In such an application, the appellant/applicant is required to demonstrate that he or she will suffer substantial loss if stay is not granted. He has not emphasized this point and instead, he has asked the court to consider the merits of the case with regard to the trial court’s views on the burden of proof. He is trying to demonstrate the chances of success in the appeal.

Considering all the facts of the case however, I come to the conclusion that though the applicant has not specifically stated that he will suffer substantial loss if stay is not granted, this is a proper case to grant stay.

I do not consider it necessary for the applicant to provide any security for the grant of stay. I therefore allow the application and grant stay of execution of the decision of the trial court, pending the hearing and determination of the appeal herein. Costs in the cause.

Dated and delivered at Kakamega this 11th day of February, 2014

George Dulu

JUDGE