

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Appeal 41 of 2006

OCCIDENTAL INSURANCE CO. LTD.....APPELLANT

VERSUS

DHANJI VAGHJI & CO. LIMITED.....RESPONDENT

R U L I N G

1. By a notice of motion dated 26th February, 2009, Dhanji Vaghji & Company Limited, who is the respondent to this appeal, seeks clarification of the order which was made by this court on 29th January, 2009. The respondent wants to know whether this court granted an order for stay of execution pending appeal, to the appellant, and if so, the court to set out the terms upon which the appellant is to enjoy the order of stay of execution.

2. The order of 29th January, 2009, referred to by the respondent arose from a ruling delivered by this court which culminating in the following order:

“For the above reasons, I do allow the application dated 14th May, 2008, and issue orders as prayed in prayer (4). The applicant shall have costs of this application. Those shall be the orders of this court.”

3. It is clear from the above, that the only order granted by this court was prayer No.4 of the application dated 14th May, 2008. That prayer was as follows:

“That this honourable court do review the ruling and order of the Hon. Mr. Justice Mutungi delivered on 6th March, 2008 and do return a finding that:

(a) The memorandum of appeal was filed within time.

(b) The applicant is entitled to a stay of execution herein pending appeal.”

4. In granting prayer No.4 the court only made a finding that the appellant was entitled to a stay of execution, as his memorandum of appeal was filed within time. The applicant’s prayer was actually in the nature of a declaration. The court could not therefore grant any specific order for stay of execution pending appeal, as none was specifically requested for. The appellant cannot therefore assume that there is an order for stay of execution merely because he is entitled to one.

5. For the avoidance of doubt, I hereby clarify that there is no order for stay of execution pending appeal which was issued by this court on 29th January, 2009.

Dated and delivered this 5th day of May, 2009

H. M. OKWENGU

JUDGE

In the presence of: -

Mutua for the applicant/respondent

Rimui for respondent/appellant

Erick – Court clerk