



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 644 of 2008

JOSEPH MBOTE KARWENJI.....APPELLANT

VERSUS

SOUTHERN CREDIT

BANKING CORPORATION LTD.....RESPONDENT

R U L I N G

1. On 30th November, 2008, a ruling was delivered by an SRM in the Chief Magistrate's Court at Milimani allowing an application for summary judgment brought by Southern Credit Banking Corporation (hereinafter referred to as the respondent), against Joseph Mbote Karwenji (hereinafter referred to as the appellant).
2. Being dissatisfied with that ruling the appellant has lodged an appeal in this court against that judgment. The appellant has now moved this court under Section 3A of the Civil Procedure Act and Order XLI Rule 4 of the Civil Procedure Rules for an order of stay of execution contending that unless the order is granted, his appeal which has good chances of success may be rendered nugatory. The appellant also claims that he will suffer substantial loss.
3. The respondent objects to the application contending that there has been unexplained inordinate delay in bringing the application. It is further contended that no security has been provided nor any substantial loss demonstrated.
4. Having considered this application, I cannot but agree with the respondent. The applicant has not demonstrated any substantial loss that he is likely to suffer. That is the main condition that the applicant had to comply with under Order XLI Rule 4(2) of the Civil Procedure rules. The application before me therefore has no substance and is accordingly dismissed.

Dated and delivered this 3rd day of June, 2009

H. M. OKWENGU

JUDGE

In the presence of: -

Bulle for the applicant

Advocate for the respondent absent

Erick – Court clerk