

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
Civil Case 6577 of 1991

JACINTA WANGARI..... PLAINTIFF

-versus-

KENYA BUS SERVICES LTD..... DEFENDANT

RULING

This is the second application brought by the Applicant/Defendant under order XLI rule 4 of the Civil Procedure Rules for stay of execution of the decree and Judgment of this court delivered on the 4th of June, 1996 (Juma, J.) pending the appeal to the Court of Appeal. A similar application filed on the 22nd of July, 1996, was dismissed by this court on the 21st of July, 1998 for want of prosecution.

I have considered all the matters that were urged before me in counsel submissions and in the affidavits filed. It would appear to me that the Applicant is quite lax in prosecuting their intended appeal. Despite the fact that Judgment was delivered way back on the 4th of June, 1996, no appeal has been lodged in the court of appeal apart from the Notice of appeal. I would add that the Applicant's counsel has been rather arrogant to his learned colleague by refusing to answer his correspondence in respect of his desire to sort out the issue of settlement of the decretal sum. All these applications for stay of execution, to my mind, has been prompted by the Notice to show cause now pending before the Deputy Registrar why execution should not issue. However, the Applicant's counsel, has to his credit already paid part of the decretal sum amounting to shs. 1.5 million and the balance now outstanding is the subject of the intended execution.

I agree with the fears expressed by the Applicant's counsel that in the event of a successful appeal on quantum, they might not be able to recover any money from the Respondent/Plaintiff once the same has been paid out. It is necessary therefore that in order to wake up the Applicant/Defendant and at the same time preserve the balance of the amount due, I will allow this application upon condition that the whole balance, of the decretal sum of shs.1,078,910/- together with accrued interest to date be deposited in a joint interest earning account in the names of counsel for the parties within 30 days from the date hereof and in default thereof, the Deputy Registrar may be at liberty to allow the Respondent/Plaintiff to proceed with execution of the decree when her notice to show cause comes up for hearing. it is so ordered.

Dated and delivered at Nairobi this 10th day of February, 1999.

S. OGUKE

JUDGE