

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

Civil Case 933 of 1996

**CONTINENTAL DEVELOPERS LTD.....
PLAINTIFF**

VERSUS

**SAUTI HOUSING CO-OPERATIVE SOCIETY LTD.....
DEFENDANT**

RULING

This is an application by Co-Operative Bank for leave to appeal against orders granted on 1.10.98. The bank was not a party to the suit. The court however decided to give the Bank opportunity to be heard in respect of the Decree Holder's application dated 3/9/97 seeking leave to sell some property which happened to be charged to the bank. The bank was made a party to execution proceedings.

It is true that Mr. Gatonye orally applied for leave to appeal on 1/10/98 after the Ruling was read. It is also true that Mr. Gatonye also orally applied for stay of execution. But the record shows that, after the application, Mr. Rachi applied for adjournment as it was 4.20 p.m as he was going to take long to reply to Mr. Gatonye's oral application. The application was stood over to the 6. 10.98 but on that day. Mr. Gatonye applied for adjournment to get full 6.10.98 but on that day. Mr. Gatonye applied for adjournment to get full instructions regarding the intended appeal.

The application for adjournment was granted and so Mr. Rachi did not reply to Mr. Gatonye's oral application.

Eventually Mr. Gatonye filed a formal application for stay of execution pending appeal and a temporary stay of execution pending appeal was granted pending the hearing of the application. The application has never been heard because over the time parties have sought time to find a buyer of the property. It would appear that the Judgment Debtor has been unsuccessful to get a buyer.

From the record it is not correct for Mr. Gatonye to say that the oral application for leave to appeal was not opposed. It was adjourned for submissions by Mr. Rachi but it appears that counsels got pre-occupied with attempts to get a buyer of the property, Mr. Rachi has now replied to the formal application for leave to appeal and has opposed it.

I have considered all the circumstances of this case. I have taken into account that in the Ruling dated 1.10.98 all the rights of the bank as the chargee and under the charge were fully protected and were not interfered with. The bank is only dissatisfied with the order regarding the manner of computation of the money recoverable. But court has given parties liberty to apply in case of disagreement.

The matter has been delayed for about one year since the date of the Ruling. Interest has been accumulating over the debt owed by J.D both to the bank and to the Decree Holder.

Even at present and considering the depressed market of the real property, it is unlikely that the property will fetch sufficient funds to pay plaintiff fully after paying the bank. An appeal will cause further delay. All this will be detrimental to the Judgment Debtor and to the plaintiff.

In the circumstances of the dispute, it is my view that there are no valid grounds for Appeal and any

further delay will cause great loss to Decree Holder and Judgment Debtor.

Consequently; I decline to grant leave to the bank to appeal dismisses the application with costs.

G M. GITHINJI

JUDGE

19.8.99