

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1611 OF 1998

AIR AL-FARAY LTD.....PLAINTIFF

VERSUS

RAYTHEON AIRCRAFT CREDIT

CORPORATION & ANOTHER.....DEFENDANT

R U L I N G

This is an application by way of Notice of Motion under Order 41 Rule 4 of the Civil Procedure Rules and section 3A of the Civil Procedure Act for an order that there be a stay of any further proceedings in this suit pending the hearing and determination of the intended appeal from the order and ruling of the court delivered on 8th October, 1998.

This court has found that it has jurisdiction to hear and determine this suit. That is the finding the defendant has appealed from. A notice of appeal has been filed and so the appeal is deemed to have been filed. It is the defendants case that further proceedings will be rendered nugatory if the intended appeal is successful.

The plaintiff on the other hand has taken the position that the defendants have not shown any evidence of loss or damage to be entitled to a stay. Further, the defendants have been litigating from a safe distance with the subject matter (the aircraft) out of the jurisdiction of this court. In addition whereas it was intimated that the defendants were ready to abide by any conditions, they have abandoned that stand.

The conditions for granting a stay under order 41 Rule 4 are set out in rule 4(2) of the civil procedure rules.

The order shall not be made unless 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. The court may also require provision of security.

Other than saying that the proceedings will be rendered nugatory if the appeal succeeds, the defendants applicants have not said what substantial loss may result if stay of proceedings is no ordered. Some tangible evidence is required. The defendant's learned counsel told the court that he had no instructions on the return of the aircraft as a condition for stay. That would have provided an ideal security for the order sought. The upshot is that the defendants have not satisfied the court that they are entitled to a stay order.

Accordingly the application is hereby dismissed with costs.

Order accordingly.

Dated and delivered at Nairobi this 19th day of November, 1998

A. MBOGHOLI MSAGHA

JUDGE

