



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: OMOLO, TUNOI & SHAH JJ.A)
CIVIL APPLICATION NO. NAI.175 OF 1998 (66/98 UR)

BETWEEN

DR. WILSON MWONGA NGOKA.....APPLICANT

AND

ANNE NDINDA NGOKA.....RESPONDENT

(Application for stay of execution in an intended Appeal
from a Ruling and Order of the High Court of Kenya
at Nairobi (Mr. Justice Mbogholi Msagha) dated
15/10/97)

IN

H.C.D.C. NO. 2 OF 1997

RULING OF THE COURT

The applicant who is a practicing Gynecologist in Nairobi seeks stay of orders of maintenance mandate lite made against him by the superior court on 15th October, 1997 on the grounds that he is unable to pay the sum in question. He has produced his auditor's reports of the accounts for three years. In 1995 he earned net sum of Shs.78,000 at odd. The learned judge in the superior court ordered that he pays Shs.45,000 per month effective 1st November, 1997.

The applicant concedes that he has not paid a single cent and has therefore made no attempt whatsoever to comply with the order of the superior court.

Whatever be the merits of the intended appeal, we are at this stage, not able to quite forecast the same. The second issue we have to consider is whether the appeal, if successful, will be rendered nugatory. There is already an attachment order issued and it appears that the warrant may be executed any moment now. Auctioning of properties attached may not eventually be of benefit to both parties as it is well known that forced auction sales do not fetch much by way of bids.

We are of the view that considering all the circumstances it may not be of advantage to the respondent if the applicant's office furniture is auctioned. The order that appears just to us is that the applicant pays Shs.100,000 within the next seven days to the respondent and that thereafter with effect from the 15th August, 1998 per month a sum of Shs.15,000. The applicant will of course pay the auctioneer's charges. These are our orders that is to say that the stay of execution sought is granted on conditions that

(1) The applicant pays Shs.100,000 within the next seven days and

(2) that with effect from 15th August, 1998 he pays a sum of Shs.15,000 per month and

(3) that he pays the court order's charges.

The costs of this application will be costs in the intended appeal.

Dated and delivered at Nairobi this 31st day of July, 1998.

R.S.C. OMOLO

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JUDGE OF APPEAL

P.K. TUNOI

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JUDGE OF APPEAL

A.B. SHAH

.....

JUDGE OF APPEAL

I certify that this a true copy of the original.

DEPUTY REGISTRAR