

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: KWACH, TUNOI & SHAH, J.J.A.)

CIVIL APPLICATION NO. NAI. 238 OF 1998 (95/98 UR)

BETWEEN

SAMKEN LIMITEDAPPLICANT

AND

BONIFACE KAGUO MWANGI

CONTRA TOURS LIMITEDRESPONDENTS

(Application for stay of proceedings in an intended
appeal from a Ruling of the High Court of Kenya at
Nairobi (Mr. Justice Ole-Keiwua) dated 22nd July,
1998

in

H.C.C.C. NO. 517 OF 1990)

RULING OF THE COURT

In this application the applicant seeks to stay proceedings in HCCC 517 of 1990 until the pending appeal lodged by it is disposed of on the ground that unless the stay is granted the appeal will be rendered nugatory and the applicant stands to suffer great prejudice. The record shows that on 22nd July, 1998 when the suit was called to hearing Mr. Chege, counsel for the applicant the plaintiff in the suit, could not produce his witnesses. His application for adjournment was rejected by the learned judge who then proceeded to dismiss the suit under Order 9B r 4 of the Civil Procedure Rules. As the appeal is pending we will not say anything on it at this stage.

However, it suffices to say that all is not lost for the applicant if the proceedings are not stayed. Moreover, there is a counter-claim to be defended and we do not see how the applicant will be prejudiced if we decline to grant this application. We refuse it. It is accordingly dismissed with costs.

Made at Nairobi this 22nd day of October, 1998.

R. O. KWACH

.....

JUDGE OF APPEAL

P. K. TUNOI

.....

JUDGE OF APPEAL

A. B. SHAH

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR