

REPUBLIC OF KENYA

IN THE HIGH COURT AT MOMBASA

CIVIL CASE NO 678 OF 1990

MARY WANJIRU GACHII APPLICANT

VERSUS

KENYA BUS SERVICES (MSA) LTD..... RESPONDENT

RULING

This is an application for stay of execution pending the hearing and determination of an intended appeal. It is made under O XLI rule 4 of the Civil Procedure Rules. It is supported by an affidavit sworn on 1.9.93 by learned counsel for the applicant Mr Gikandi Ngibuini in which he deposes that he had studied the proceedings and judgment and was of the view that the appeal has overwhelming chances of success and that the decretal amount if paid to the plaintiff will render the appeal nugatory as the plaintiff will then not be able to refund the amount paid to her.

By virtue of the provision of o 41 rule 4 (2) of the Civil Procedure Rules –

“No order for stay of execution shall be made under sub rule (1) unless –

(a) 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; and

(b) such security as the Court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.

Although Mr Mburu Kariuki opposes this application on the grounds that the application is misconceived and bad in law; that the application has been overtaken by events as attachment of the defendant's property has been effected and that there are no chances of the appeal succeeding, I think most of those matters are not relevant factors for consideration in this application. Upon my assessment of the matter I am satisfied that substantial loss may result if the application is not made.

Accordingly I grant a stay of execution upon the following terms:-

(1) The entire decretal amount is paid within 2 weeks of the date hereof into an interest bearing account in a bank approved by both sides in the joint names of the advocates representing the two parties.

(2) The applicant to pay forthwith the respondent's costs incurred in connection with the execution proceedings.

(3) The applicant to pay the respondent's costs of this application.

Dated and Delivered at Mombasa this 12th day of October, 1993,

T. MBALUTO

.....

JUDGE