



IN THE COURT OF APPEAL

AT NAIROBI

(Coram: Law, Miller JJA & Simpson Ag JA)

CIVIL APPLICATION NO. 20 OF 1981

BETWEEN

MUNGAI.....APPLICANT

AND

NDABA.....RESPONDENT

RULING

Judgement was entered exparte against the applicant in default of defence, under OIXA of the Civil Procedure Rules. The applicant applied to have the judgment set aside. The learned judge (Hancox J) did so, and in the exercise of his powers conferred by rule 10 OIXA imposed the following terms, on March 1981 —

- a) the applicant to deposit Kshs 30,000 within seven days; and
- b) the applicant to file his defence within seven days thereafter.

The period of 7 days in which to raise Kshs 30,000 was somewhat short, but it was always open to the applicant to apply for an extension of time in which to raise the money. The applicant did not comply with these terms, so that the exparte judgment still stands. Notice of Appeal has been given against that order.

On June 10, 1981, the applicant applied to the High Court for a stay of execution; Hancox J dismissed that application. Notice of Appeal again has been given against that decision.

The applicant now applies to this Court for a stay, under rule 5(2) of the rules of this Court. By rule 5(2) (b), such an application comes to the full court. The applicant is represented by Mr Machio, who offers security today in the form of a lorry said to be worth Kshs 150,000. We find it difficult to accept that, in the three months which have elapsed since Hancox J's order of March 12, the applicant has not been able to raise and offer a reasonable sum of money by way of deposit. We are not impressed with the applicant's bona fides in this matter. He can apparently raise money to instruct advocates, and to file two appeals to this court, which involves Kshs 4,000 in security alone, but he has not come prepared today to offer a reasonable deposit, nor was he before Hancox J.

It has not been shown to us that Hancox J wrongly exercised his discretion in refusing to order a stay of execution, and we have also come to the conclusion that no good reason has been shown for us to order a stay of execution at this stage.

We dismiss this application with costs.

Dated and Delivered at Nairobi this 4th day of July 1981.

E.J.E.LAW

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JUDGE OF APPEAL

C.H.E.MILLER

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JUDGE OF APPEAL

A.H.SIMPSON

.....

AG.JUDGE OF APPEAL

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

DEPUTY REGISTRAR