



IN THE COURT OF APPEAL

AT NAIROBI

CIVIL APPLI. NAI NO. 171 OF 2008 (UR 108/2008)

PETER KIMANI KAIRU T/A

KIMANI KAIRU & COMPANY ADVOCATES APPLICANT

AND

ANNA MARIE CASSIEDE

BRUNO CASSIEDE..... RESPONDENTS

**(An application for stay of execution of the judgment/decree of the High Court of Kenya at Nairobi
(Kimaru J.) dated 4th day of June 2008**

in

H.C.C.S. NO.39 OF 2007)

RULING OF THE COURT

PETER KIMANI KAIRU, the applicant, is an advocate of the High Court of Kenya practising under the firm name of Messrs. Kimani Kairu & Company Advocates. By his motion brought under **rule 5 (2)** of the Court of Appeal Rules he moves the Court for an order of stay of execution of the ruling and order of the superior court, Kimaru J, made on 4th June 2008 pending the hearing and determination of Civil Appeals numbers 175 and 176 of 2008. By that ruling the learned Judge allowed the respondents' application for summary judgment and entered judgment against the applicant for the sum of shs.2,500,000/= and Euros 286,000 together with costs and interest.

It is common ground that sometime in January 2006 the respondents instructed the applicant to act for them in the purchase of a property known as L.R.No. 3734/348, Othaya Road, Nairobi, which is a developed residential property. The purchase price for the said property was shs.25,000,000/= which the respondents paid in the form of Kenya Shillings and Euros. It is not in issue that the applicant remitted the purchase price to the vendors. However, for some reasons which are not very clear and are not really relevant to the application now before us the Agreement for Sale of the property was not consummated and disagreement set in leading to the respondents seeking refund of the purchase price. As is apparent that the parties could not agree on the sum repayable the respondents then filed suit, leading to summary judgment being entered in their favour. The decretal sum we are informed from the bar, is now in excess of shs. 31,000,000/=.

Among the grounds of appeal raised in the memoranda of appeal are, whether a contract between an advocate and a client is a statutory one and whether any dispute arising thereon must be dealt with in the manner provided by **Order 52 Rule 4 (2)** of the Civil Procedure Rules; and whether or not the superior court had jurisdiction to deal with the suit and the application filed by the respondents. On our consideration of these grounds we are satisfied, without deciding, that the appeals so filed are arguable and not frivolous.

In dealing with the issue whether or not success in the intended appeals will be rendered nugatory if stay is not granted, we take into account the fact that the applicant is a senior advocate of the court and that he has offered to refund all monies paid by the respondents less professional fees and all other expenses and disbursements incurred in the aborted sale of the property. Moreover, any execution against him will not only be embarrassing but will cause him irreparable loss and damage in his business and in his profession. See **Oraro and Rachier Advocates v. Co-operative Bank of Kenya Ltd [1999] 1 EA 236**. We have also considered the fact that Mr. Ojiambo for the respondents has offered to accept the refund as proposed by Mr. Kibet for the applicant and that he concedes the application in those terms.

For these reasons we would allow the application for stay of execution as prayed for in the motion dated 14th July, 2008 on condition that the applicant pays to the advocates for the respondents the sum of shs.27,5000,000/= within 14 days hereof. In default of payment as aforesaid the application shall stand dismissed. The costs of this application shall be in the appeals.

Dated and delivered at Nairobi this 9th day of October 2008.

P.K. TUNOI

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JUDGE OF APPEAL

S.E.O. BOSIRE

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JUDGE OF APPEAL

D.K.S. AGANYANYA

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JUDGE OF APPEAL

I certify that this is a
true copy of the original

DEPUTY REGISTRAR