

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OMOLO, TUNOI, & O’KUBASU JJ.A)

CIVIL APPLICATION NO. NAI. 316 OF 2004 (164/04 UR)

BETWEEN

**1. TROPICAL INSTITUTE OF COMMUNITY HEALTH
& DEVELOPMENT REGISTERED TRUSTEES**

2. DR. DAN CLEMENT OWINO KASEJE

3. RT. REV. FRANCIS MWAI ABIERO

4. REV. MUTAVA MUSYIMI

5. RT. REV. JOSEPH OTIENO WASONGA

6. RT. REV. HAGGAI NYANG

7. DR. RICHARD MUGA

8. MRS. PENINA OCHOLLA ODHIAMBO

9. DR. NYAMBURA GITHANGUI.....APPLICANTS

AND

PARAMOUNT INVESTMENTS LTD. RESPONDENT

*(An application for stay of execution in an intended appeal from Judgment and Orders of the High Court
at
Nairobi (Kasango AG. J.) dated 30 th September 2004*

in

H.C.C.C. NO. 1667 OF 2001)

RULING OF THE COURT

We are prepared to assume in favour of the applicants, and we do so, that they have an arguable appeal. The applicants are saying, for example, that the respondent had no title to pass to them. That is an arguable point. It is to be remembered that an arguable appeal does not mean an appeal that will succeed. It is simply an appeal which is not frivolous.

On the issue of whether or not the appeal will be rendered nugatory if we do not grant a stay the applicants have sworn through Mr. Obura that they fear the respondent might not be able to refund the decretal sum if it was paid over to it and the appeal succeeded in the end. The respondent has not found it fit to make any answer to this and Mr. Thangei for the respondent is unable to tell us the resources of the

respondent. Mr. Obura for the applicants tells us they are prepared to deposit the money in a joint account. Weighing the interests of each side, we grant an order of stay on condition that the applicants shall, within thirty (30) days of the date hereof deposit in a joint account in a reputable bank, the account to be in the names of the respective advocates for the parties, the decretal sum of Kshs.3,583,125/-. If that is not done within the stated period the application for stay shall stand dismissed with costs. But if the money is so deposited then there shall be a stay of execution until the hearing and determination of the intended appeal, and the costs of the motion shall be in the appeal. Those are our orders.

Dated at Nairobi this 20th day of December, 2004.

R.S.C. OMOLO

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JUDGE OF APPEAL

P.K. TUNOI

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JUDGE OF APPEAL

E.O. O'KUBASU

.....

JUDGE OF APPEAL

I certify that this is

a true copy of the original

DEPUTY REGISTRAR.