



**REPUBLIC OF KENYA**

**High Court at Kericho**

**Civil Appeal 29 of 2012**

**RAYMOND OTIENO.....APPELLANT**

**VERSUS**

**CHARLES OGOTI ARIGISI.....1<sup>ST</sup> RESPONDENT**

**TRIMPLEX PAUTOS.....2<sup>ND</sup> RESPONDENT**

**RULING**

A Notice of Motion dated 16<sup>th</sup> October 2012 is brought by the Appellant/Applicant herein pursuant to the provisions of **Order 42 Rule 6 (1)** and **8 (2)** of the **Civil Procedure Rules, Section 159** of the **Constitution** of Kenya 2010 and all enabling provisions of the law. It is for an order for an interim stay of execution of orders granted by Sotik Court in Civil Case No. 109 of 2008 pending hearing of HCCC 29 of 2012.

The application is supported by grounds that he had filed an appeal in the High Court. The Appellant had been Insured by Blue Shield Insurance which obtained a moratorium dated 16/9/2011, yet the Sotik Court dismissed the said moratorium order. An application for stay before the lower court was also denied. The application is supported by an affidavit sworn by the applicant which reiterates what is stated in the grounds upon which the application is based and an averment that there was a threatened process of proclamation of the applicant's property.

The application is unopposed. This being a court to which the appeal has been made in determining whether or not to grant the prayers sought in consideration of the application I must ensure that justice is done.

The duty was upon the applicant to demonstrate to the court the fact that if the order sought is not granted he will suffer some substantial loss.

There is evidence that an appeal against the ruling of Sotik CMCC NO. 109 of 2008 has been lodged in the High Court. It is against the ruling dismissing the appellant's application dated 5/6/2012 on 27/6/2012. There is however no evidence of the ruling from which the appeal emanates.

Annexure 'CAA 1' is a moratorium dated 28<sup>th</sup> October 2011. According to the moratorium, proceedings against Blue Shield Insurance Co. Ltd or its policy holders were served during the currency of the moratorium declared by the Statutory Manager on 16<sup>th</sup> September 2011.

The application in which the moratorium was said to have been disregarded was said to have been delivered on 27<sup>th</sup> June, 2011. There is no evidence of the time within which the moratorium was to remain in operation. It was the duty of the applicant to demonstrate by availing this information to the court. If this court had a glimpse of the ruling may be it could have come up with an informed opinion regarding the time.

The applicant alluded to a threatened process of proclaiming the applicant's property. There was no demonstration of the allegation. The applicant has also not suggested what loss if any he is likely to suffer if the order sought is not granted.

This being the case I have not been convinced on a balance of probability as to why I should exercise the discretion in granting the order sought. Accordingly, I dismiss the application with no orders as to costs.

It is so ordered.

**DATED** at **KERICHO** this 19<sup>th</sup> day of November 2012

**LILIAN N. MUTENDE**

**JUDGE**

**COUNSEL APPEARING**

Mr. Ombati, Advocate, for the Applicant

Mr. R. Koech, Court clerk



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