



Case Number:	Civil Case 1260 of 2002
Date Delivered:	17 Dec 2004
Case Class:	Civil
Court:	High Court at Nairobi (Milimani Commercial Courts Commercial and Tax Division)
Case Action:	Ruling
Judge:	Mary Muhanji Kasango
Citation:	GEORGE GIKUBU MBUTHIA v PETER NJERU MUGO & 3 OTHERS [2004] eKLR
Advocates:	-
Case Summary:	<b>[RULING] Appeals-stay of execution pending appeal</b> -where the applicant has made three similar applications all of which have been denied-whether the present appeal constitutes an abuse of the court process
Court Division:	Civil
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 1260 of 2002**

**GEORGE GIKUBU MBUTHIA .....PLAINTIFF**

**VERSUS**

**PETER NJERU MUGO .....1<sup>ST</sup> DEFENDANT**

**GEOFFREY KARIUKI MWENDA .....2<sup>ND</sup> DEFENDANT**

**HON ATTORNEY GENERAL.....3<sup>RD</sup> DEFENDANT**

**CONSOLIDATED BANK OF KENYA .....4<sup>TH</sup> DEFENDANT**

**RULING**

The plaintiff for the umpteenth time has filed an application for stay of execution of the decree passed by this court on 20<sup>th</sup> March 2003.

The first application was filed on 20<sup>th</sup> May 2003, the second on 20<sup>th</sup> January 2004 and the third on 20<sup>th</sup> May 2004.

The present application is dated 24<sup>th</sup> November 2004 and is brought under Order 21 Rule 25 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act.

The application seeks an order that, the court do stay execution for the decree given by this court on 20.3.2003 pending hearing of civil application No. NAI 225 of 2003.

What the plaintiff essentially seeks from this court is stay of execution pending the hearing of the civil application No. 225 of 2003 in the court of appeal.

The order 21 rule 25 relied upon by the plaintiff is misconceived because it talks of stay being granted because of an impending suit. Here it is not the case because what is pending is not a suit but an appeal in the court of appeal.

When the plaintiff was asked by the court why he had not brought an application under order 41 rule 4 he was quick to say that it was because he has a pending suit and on that basis he sought stay. Now, the plaintiff is an intelligent man and he was obviously aware of the standards he needs to meet in regard to Order 41 but whether his intention is to exasperate the court and the counsels for the defendants it is not clear to me.

The plaintiff despite severally being warned by the court to steer clear of any submission which related to

the merits of the case and which was tantamount to seeking appeal he simply ignored that warning and as a consequence there is no single argument that the court can use to decide whether the plaintiff can be entitled to a stay of execution.

Over and above that the plaintiff has made three (3) previous applications for stay, which have been denied. The present application therefore more than anything is res judicata and is a blatant abuse of the court process.

The court will reject the plaintiff application for the reasons stated herein above and the court is minded to make stern orders to ensure that the plaintiff will not continually abuse its process.

The orders of this court are as follows: -

- (1) The plaintiff's application dated 24<sup>th</sup> November 2004 is dismissed with costs to all the defendants.
- (2) The plaintiff is barred from filing any further application for stay of execution of the decree of 20<sup>th</sup> March 2003 unless and until he pays the 2<sup>nd</sup> defendants principal costs of kshs 126, 290. 00 and also pay the costs of 1<sup>st</sup> and 4<sup>th</sup> defendants of the application dated 24<sup>th</sup> November 2004.

**Dated and delivered this 17<sup>th</sup> day of December 2004.**

**MARY KASANGO**

JUDGE



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