**Mediratta v Kenya Commercial Bank and others**

**Division:** Milimani Commercial Court of Kenya at Nairobi

**Date of ruling:** 19 May 2006

**Case Number:** 21/05

**Before:** Emukule J

**Sourced by:** LawAfrica

**Summarised by:** E Ongoya

*[1] Civil practice and procedure – Execution – Stay of Execution of Order – Applicable principles.*

**Editor’s Summary**

By ruling delivered on 9 May 2005, the High Court dismissed with costs the plaintiff’s application for an injunction to restrain the first and second defendants from transferring, charging, taking possession of or otherwise howsoever from exercising proprietary rights over a certain parcel of land. Following the delivery of the ruling the plaintiff sought a stay of execution of that order pending preparation of an intended appeal on that ruling to the Court of Appeal. The application was made orally pursuant to the provisions of Order XLI, rule 4(5) of the Civil Procedure Rules. The application was declined. The plaintiff then filed a formal application to the High Court seeking a stay of the order. **Held** – The principles for grant of a stay of execution at the High Court as set out in Order XLI, rule 4(2)

and which the applicant must satisfy are:

(i) Substantial loss may result unless the stay is given.

( ii) The application for stay had been lodged without delay; and

(iii) The applicant has furnished security for due performance.

Order XLI, rule 4(5) of the Civil Procedure Rules implies that following an informal (verbal) application

and there is a response or an order from the court or judge presiding over the matter, the pronouncement

by the judge or court, whether “there be a stay” or “there be no stay or the order granted” is final and

binding upon the parties and the court is *functus officio* thereafter.

Application dismissed.

**Cases referred to in ruling**

***East Africa***

*Century Oil Trading Company Limited v Kenya Shell Limited* [2003] 1 EA 41

*Kenon Court v Giro Commercial Bank Limited* Nairobi Milimani Commercial Courts, High Court civil

case number 789 of 1999

*MM Butt v The Rent Restriction Tribunal (Respondent) and ZN Shah and SM Shah* civil appeal number

Nairobi 6 of 1979

***United Kingdom***

*Erinford Properties Limited v Cheshire County Council* [1974] 2 All ER 448