



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**CIVIL APPEAL NO. 53 OF 2019**

**(An appeal from the judgment of Hon. FM Nyakundi, Senior Resident Magistrate, in Mumias SPMCCC No. 288 of 2012, delivered on 29<sup>th</sup> April 2019)**

**EDEN MILLERS .....APPELLANT**

**VERSUS**

**PHYLIS SWALI WAKHUNGU.....1<sup>ST</sup> RESPONDENT**

**KASUNE ENTERPRISE LIMITED.....2<sup>ND</sup> RESPONDENT**

**ANDREW OMUHAKA.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. What I am called upon to determine is an application dated 18<sup>th</sup> September 2019, for stay of execution pending appeal.
2. The impugned judgment was delivered on 29<sup>th</sup> April 2019, and the memorandum of appeal herein was lodged on 28<sup>th</sup> May 2019, within the thirty days allowed in law.
3. The original trial records of the trial court have been availed, complete with three copies of the proceedings and judgment duly typed, and the judgment certified. For all practical purposes the stage is set for the hearing of the appeal.
4. I believe justice of the situation favours *status quo* being maintained, to facilitate the hearing and disposal of the appeal, for an aggrieved party is entitled to a second opinion from an appellate court.
5. Consequently, I do hereby allow the application dated 18<sup>th</sup> September 2019, on the terms proposed. The stay order shall be on condition that the appellant deposits the entire judgment in court within the next thirty days of the date of this order.
6. The appellant shall file record of appeal within thirty days, after which the Deputy Registrar shall cause the appeal to be listed for directions on disposal.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 20<sup>TH</sup> DAY OF DECEMBER, 2021**

**W. MUSYOKA**

**JUDGE**

**In the presence of:-**

**Erick Zalo – Court Assistant**

**Mr. Mutoka for Mr. Billy Amendi for Appellant**