



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CIVIL APPEAL NO. 241 OF 2013**

**1. CAPITAL MOTORS EXHIBITION LTD.**  
**2. NELSON MURIUKI**  
**3. EMILIO NJERU KANENE ..... APPELLANTS/APPLICANTS**

**VERSUS**

**DEDAN MUTHUI MWINZI ..... RESPONDENT**

*(Being an appeal from the Ruling of the Hon. A.G Kibiru (SPM) in the Senior Principal Magistrate’s Court at Kitui Principal Magistrate’s Court Civil Case No. 315 of 2005 dated 05<sup>th</sup> November 2013)*

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*(Before B. Thurania Jaden J)*

**R U L I N G**

1. The application dated 14/3/2014 seeks orders that there be a stay of lower court proceedings in **SPMCC No. 315 of 2005 – Kitui** pending hearing and determination of this appeal.
2. It is stated in the affidavit in support that the Applicant was enjoined in **SPMCC Kitui No. 315/2005** without the leave of the court when the case against him was time barred. That the Applicant’s **Preliminary Objection** was dismissed by the lower court. It is deponed that the Applicant stands to suffer substantial loss and damage if the lower court proceedings are not stayed. It is further deponed that the Applicant is prepared to deposit an insurance bond as security.
3. The application is opposed. According to the replying affidavit, the application is an abuse of the process of the court made in a bid to delay the hearing. That the application has been made after a delay of four months. It is further deponed that the Applicant has not established what substantial loss he stands to suffer.
4. The application was canvassed by way of written submissions which I have duly considered.
5. Under **Order 42 rule 6** provides as follows:-

**“No order for stay of execution shall be made under subrule (1) unless –**

- a. **The court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and**

b. **Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”**

6. The delay of four months has not been explained. However, the same is not inordinate.

1. Although the Applicant has deponed that he stands to suffer substantial loss, the case is being heard by a court of competent jurisdiction. The Applicant will still exercise his right of appeal if at the end of the suit he is still dissatisfied. (See for example **Thomas Patrick Gilbert Cholomondeley –vs- R 2009 e KLR.**

7. I find no merits in the application and dismiss the same in costs.

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**B. THURANIRA JADEN**

**JUDGE**

**Dated and delivered at Machakos this 20<sup>th</sup> day of March 2015.**

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**B. THURANIRA JADEN**

**JUDGE**