



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**CIVIL APPEAL NO. 16 OF 2009**

*(Being an appeal from the judgment in Civil Case No. 564 of 2007 of the Chief Magistrate’s Court at Machakos – Hon. F. Muchemi, C.M. on 13/8/2008)*

KENYA POWER & LIGHTNING COMPANY.....APPELLANT

**VERSUS**

STEPHEN WAMBUA MUNYASYA.....RESPONDENT

**RULING**

1. The application dated 30<sup>th</sup> April, 2010 seeks orders that the order of stay of execution granted on 29<sup>th</sup> October, 2009 vide a ruling dated 29<sup>th</sup> October 2009 be vacated.
2. The application is supported by the affidavit of the Applicant, Stephen Wambua Munyasya sworn on 30<sup>th</sup> April, 2010.
3. In the ruling dated 29<sup>th</sup> October, 2009 the court made the following orders –
  - i. that let there be stay of execution pending hearing of the Appeal herein on condition that the Kshs. 500,000/= deposited in court should be released to the Respondent forthwith.*
  - ii. that the balance of the decretal sum should be deposited in an interest earning account in the names of the advocates for the parties pending hearing and determination of the appeal.*
  - iii. that Costs shall abide the Appeal.*
4. The Applicant’s complaint is that the Respondent has not complied with the said court orders nor taken any steps to prosecute the appeal herein.
5. The application is opposed. According to the replying affidavit sworn by counsel for the Respondent, the amount in question was deposited in the SPM Machakos Account No. 1106441206 KCB Machakos over two years ago. However, no evidence of the said payment has been exhibited in court. The date of the said deposit has not been given. There is therefore no evidence that the court orders were complied with.
6. Consequently, I allow the application as prayed.

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**B. THURANIRA JADEN**

**Dated and delivered** at Machakos this 28<sup>th</sup> day of April, 2015

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**JUDGE**