



**REPUBLIC OF KENYA**

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

**CIVIL DIVISION**

**CIVIL CASE NO 1525 OF 2001**

**JOEL MURIU.....PLAINTIFF**

**V E R S U S**

**EQUATOR DISTRIBUTORS (K) LTD & ANOTHER.....DEFENDANT**

**AND**

**ASSOCIATED MOTORS LIMITED.....THIRD PARTY**

**R U L I N G**

1. The Third Party herein has applied by **notice of motion dated 31<sup>st</sup> August, 2013** for judgment on liability in this suit to be entered in terms of the **judgment delivered on 30<sup>th</sup> August, 2011** in the **“test suit” (Nairobi HCCC NO. 21<sup>st</sup> June 1999)**, and that upon such entry of judgment on liability, the suit herein as against the Third Party be dismissed in the terms of said judgment.
2. The Plaintiff supports the Third Party’s application.
3. The 1<sup>st</sup> Defendant has opposed the application by **replying affidavit filed on 28<sup>th</sup> February, 2014** which is sworn by **Frederich Otieno Mege**, the 1<sup>st</sup> Defendant’s advocate. Grounds of opposition include -
  - i. That a notice of appeal was duly lodged against the judgment in the test suit and duly served.
  - ii. That a consent order for stay of execution of the test suit judgment was entered on 30<sup>th</sup> January, 2014 pending disposal of the intended appeal or appeals.
  - iii. That the present application is premature, and the order sought is intended to frustrate the intended appeal(s).
4. I have considered the submissions of the learned counsels appearing. No authorities were cited.
5. It is conceded that the judgment in the test suit has been challenged and notice of appeal in that regard lodged. It is also conceded that execution of the decree flowing from that judgment was stayed pending disposal of the intended appeal.
6. In these circumstances I hold that it would not be proper to permit any further action to be taken upon the impugned judgment in the test suit before disposal of the intended appeal – or the notice of appeal.
7. I will in the event refuse the application for now. It is dismissed, but with no order as to costs. It

is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 27<sup>TH</sup> DAY OF MAY 2014**

**H. P. G. WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF MAY 2014**