



**REPUBLIC OF KENYA**

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

**CIVIL DIVISION**

**ELC CASE NO. 152 OF 2004**

**ALI DAUD MOHAMED.....PLAINTIFF**

**VERSUS**

**1. ANTHONY MAIKLYA MWANZA &**

**JOSEPH KIOKO MWANZA**

**(Sued jointly as administrators of the estate of PHILOMENA MUENI  
MWANZA)**

**2. COMMISSIONER OF LANDS**

**3. CHIEF LAND REGISTRAR .....DEFENDANTS**

**AND**

**YASIN MOHAMED JAMAL .....INTERESTED PARTY**

**RULING**

**1.** By a considered ruling dated 14<sup>th</sup> and delivered on 15<sup>th</sup> November 2013 the court (Waweru, J) dismissed an application by notice of motion dated 27<sup>th</sup> July 2011 filed by the Interested Party herein by which he sought an order to review and set aside the consent judgment entered herein on 17<sup>th</sup> September 2009. The court also lifted the interim injunction that had been granted on 20<sup>th</sup> March 2013.

**2.** The Interested Party has now filed **notice of motion dated 16<sup>th</sup> December 2013**. The application seeks the main order of stay of execution of the aforesaid order of dismissal of the Interested Party's application to review and set aside the consent judgment. The order of stay is sought pending hearing and determination of an appeal against the said order of dismissal. The application has been opposed by the Plaintiff.

**3.** It is my considered view that this present application by the Interested Party is profoundly misconceived. By its aforesaid ruling delivered on 15<sup>th</sup> November 2013 this court simply dismissed with costs the Interested Party's application to review and set aside the consent judgment. Apart from the order for costs, there is no other positive order in the said ruling capable of execution that might be stayed, and it is apparent that it is not the order of costs that the Interested Party is concerned with in his application. In any event, the court would hardly grant stay of execution of an order for costs.

**4.** The notice of motion dated 16<sup>th</sup> December 2013 is not only misconceived but lacks merit. It is hereby dismissed with costs to the Plaintiff. It is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 17<sup>th</sup> DAY OF JULY 2014**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 18<sup>TH</sup> DAY OF JULY 2014**