



8. *Advocates* :

i) *A.N. Munga instructed by M/s Mbigi Njuguna & Co Advocates for appellant/original defendant*

ii) *P.K. Njiiri instructed by M/s P.K. Njiiri & Co Advocates for respondent/original plaintiff*

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**CIVIL APPEAL NO. 21 OF 2012**

**BALOCH FAISAL & ANOTHER .....APPELLANTS/  
ORIGINAL  
RESPONDENT**

**VERSUS**

**ELLOY KAWIRA NTHIIRI .....RESPONDENT/ ORIGINAL  
PLAINTIFF**

***(Being an appeal from the Judgment of Hon. Ndeda Esq, Senior Principal Magistrate delivered on 7<sup>th</sup>  
December 2011 in CMCC 525 of 2009 at Thika Law Courts)***

**R U L I N G**

***Application for stay of execution***

***Dated 10<sup>th</sup> February 2012***

**I. BACKGROUND**

1. The respondent, original plaintiff was, on the 30<sup>th</sup> January 2007 as a pedestrian, run down by a motor vehicle and sustained soft tissue injuries.
2. A case in the subordinate court was filed by the respondent in which the trial court held in its judgment that the appellant original defendant were liable for the said accident at 90% whilst the respondent at 10%.
3. An award for the soft tissue injuries was made for pain and suffering sustained at Ksh. 40,000/- less 10% contribution Ksh. 40,000/- Total Ksh. 360,000/=
4. Being dissatisfied, the two appellants filed appeal, by an application of 10<sup>th</sup> February 2012, they prayed for an application of stay of execution.

**II APPLICATION 10<sup>TH</sup> FEBRUARY 2012**

5. The arguments put forward that they will be raising the issue of liability and quantum on appeal, the quantum was inordinately high. The issue of ownership of the vehicle would also be raised.
6. The chances of success of the appeal was high.
7. In reply, the respondent stated that there was no objection to there being a stay of execution but that

the whole sum of Ksh. 360,000/- be deposited to court. The appellant prays for half of the sum be deposited.

### **III FINDINGS**

8. The application before me was brought without delay.
9. The probability of success of the appeal is arguable.
10. The security offered by the appellant was a deposit of half of the decretal sum.
11. I would find that this is a correct case to issue orders of stay of execution. The condition being that half the decretal sum be deposited as security namely Ksh. 180,000/- in an interest earning account signed by both advocates within 14 days, failure to, the said sum be deposited to court.

**DATED THIS 22<sup>ND</sup> DAY OF FEBRUARY 2012 AT NAIROBI**

**M.A. ANG'AWA**  
**JUDGE**

*Advocates :*

- i) *A.N. Munga instructed by M/s Mbigi Njuguna & Co Advocates for appellant/original defendant*
- ii) *P.K. Njiiri instructed by M/s P.K. Njiiri & Co Advocates for respondent/original plaintiff*