



## Editorial Summary

1. *Civil Appeal*
2. *Civil Practice and procedure*
3. *Subject of subordinate court case*

### *DECLARATORY SUIT*

- 3.1 *Running down cause*
- 3.2 *Motor vehicle accident*
- 3.3 *Suit filed at the PM's court*  
*Kikuyu 9/2008*  
*seeking orders for original defendant*  
*to settle award.*
- 3.4 *Appeal on the original first suit*  
*filed PMCC 104/04 as CA 104/09.*
- 3.5 *Declaratory suit has hearing to*  
*the appeal 104/09*

4. *Respondent did not participate.*

5. *Held:*

- a) *There be a stay of proceedings*  
*pending interparte hearing of*  
*application.*

6. *Case Law:*

7. *Advocates :*

i) *M Mwangi instructed by Mwangi Kengara & Co Advocates for applicant/respondent*

ii) L Kimani instructed by Kimani Michuki & Co Advocates for

2<sup>nd</sup> respondent/2<sup>nd</sup> appellant

iii) M/s Miller & Co Advocates for 1<sup>st</sup> respondent/1<sup>st</sup> appellant absent

**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT NAIROBI**

**MILIMANI LAW COURTS**

**Civil Appeal 104 of 2009**

**BUS TRACK LTD**

**KENYA BUS SERVICES LTD .....APPELLANT/ ORIGINAL DEFENDANTS**

**VERSUS**

**MUTHIANI KIILU .....RESPONDENT/ ORIGINAL PLAINTIFF**

*(Being an appeal from the Judgment of Hon. M. W. Muigai (Senior Principal Magistrate) in Case No 104 of 2001 dated 4<sup>th</sup> May 2007 at Kikuyu Courts)*

## **RULING**

### **Application for stay of proceedings**

**9<sup>th</sup> March 2012**

#### **I. BACKGROUND**

1. A road traffic accident occurred. A suit was filed in the subordinate court at Kikuyu being PMCC 104/04.
2. An award was made against the appellant herein. This appeal file concerns the appeal against that decision being CA 104/09.
3. The respondent in the meantime filed a declaratory suit. This case is still pending.
4. The applicant prays there be stay of execution pending the hearing of the appeal before court.

#### **II FINDINGS**

5. It was noted that the respondent did not participate in this matter. There will nonetheless be status quo/stay of proceedings of the subsequent declaratory suit No. 104/04 PMCC pending the hearing and determination of the application 9<sup>th</sup> March 2012 interparte.

6. The respondents be served with the application and the orders of this court.

7. There will be costs in the application.

**DATED THIS 23<sup>RD</sup> DAY OF MARCH 2012 AT NAIROBI**

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

*Advocates :*

- i) *M Mwangi instructed by Mwangi Kengara & Co Advocates for applicant/respondent*
- ii) *L Kimani instructed by Kimani Michuki & Co Advocates for 2<sup>nd</sup> respondent/2<sup>nd</sup> appellant*
- iii) *M/s Miller & Co Advocates for 1<sup>st</sup> respondent/1<sup>st</sup> appellant absent*